

106TH CONGRESS
1ST SESSION

H. R. 2944

To promote competition in electricity markets and to provide consumers
with a reliable source of electricity, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 1999

Mr. BARTON of Texas introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Transportation and Infrastructure, Resources, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To promote competition in electricity markets and to provide
consumers with a reliable source of electricity, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Electricity Competition and Reliability Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purpose.

TITLE I—OPEN TRANSMISSION ACCESS

- Sec. 101. Clarification of State authority regarding retail electric competition; clarification of Federal and State jurisdiction.
- Sec. 102. Open access for all transmitting utilities.
- Sec. 103. Regional transmission organizations.
- Sec. 104. Regional transmission siting agencies.
- Sec. 105. Expansion of interstate transmission facilities.
- Sec. 106. Conforming amendments.

TITLE II—ELECTRIC RELIABILITY

- Sec. 201. Electric reliability.

TITLE III—CONSUMER PROTECTION

- Sec. 301. Electric supplier information disclosure.
- Sec. 302. Consumer privacy.
- Sec. 303. Electric supply unfair trade practices.
- Sec. 304. Universal and affordable service.
- Sec. 305. Definitions.

TITLE IV—MERGERS

- Sec. 401. Electric company mergers and disposition of property.
- Sec. 402. Elimination of review by the Nuclear Regulatory Commission.

TITLE V—PROMOTING COMPETITION

Subtitle A—Retail Reciprocity

- Sec. 501. Retail reciprocity.

Subtitle B—Public Utility Holding Company Act of 1935

- Sec. 511. Definitions.
- Sec. 512. Repeal of the Public Utility Holding Company Act of 1935.
- Sec. 513. Federal access to books and records.
- Sec. 514. State access to books and records.
- Sec. 515. Exemption authority.
- Sec. 516. Affiliate transactions.
- Sec. 517. Applicability.
- Sec. 518. Effect on other regulations.
- Sec. 519. Enforcement.
- Sec. 520. Savings provisions.
- Sec. 521. Implementation.
- Sec. 522. Transfer of resources.
- Sec. 523. Effective date.
- Sec. 524. Conforming amendment to the Federal Power Act.

Subtitle C—Public Utility Regulatory Policies Act of 1978

- Sec. 531. Prospective repeal.
- Sec. 532. Recovery of costs.
- Sec. 533. Definitions.

Subtitle D—Additional Provisions Promoting Competition

- Sec. 541. Aggregation.
- Sec. 542. Interconnection.

TITLE VI—FEDERAL ELECTRIC UTILITIES

Subtitle A—Tennessee Valley Authority

- Sec. 601. Definitions.
- Sec. 602. Wholesale competition in the Tennessee Valley Region.
- Sec. 603. Tennessee Valley Authority power sales.
- Sec. 604. Tennessee Valley Authority electric generation facilities.
- Sec. 605. Renegotiation of all-requirements power contracts.
- Sec. 606. Regulation of Tennessee Valley Authority transmission system.
- Sec. 607. Regulation of Tennessee Valley Authority distributors.
- Sec. 608. Stranded cost recovery.
- Sec. 609. Application of antitrust law.
- Sec. 610. Savings provision.

Subtitle B—Bonneville Power Administration

- Sec. 621. Definitions.
- Sec. 622. Regulation of Bonneville Transmission System.
- Sec. 623. Surcharge on transmission rates to recover otherwise nonrecoverable costs.
- Sec. 624. Limit on retail sales by Bonneville Power Administration.
- Sec. 625. Acquisition of new major generating resources.
- Sec. 626. Application of antitrust law.
- Sec. 627. Conforming amendments.

Subtitle C—Other Power Marketing Administrations

- Sec. 631. Definitions.
- Sec. 632. Wholesale power sales by Federal power marketing administrations.
- Sec. 633. Regulation of Federal power marketing administration transmission systems.
- Sec. 634. Accounting.
- Sec. 635. Application of antitrust law.

TITLE VII—ENVIRONMENTAL PROVISIONS

- Sec. 701. Renewable energy production incentive.
- Sec. 702. Net metering.

TITLE VIII—PROVISIONS RELATING TO INTERNAL REVENUE CODE

- Sec. 801. Business activities of mutual or cooperative electric companies.
- Sec. 802. Tax-exempt bond financing of certain electric facilities.
- Sec. 803. Nuclear decommissioning costs.
- Sec. 804. Renewable energy tax credit.

TITLE IX—MISCELLANEOUS PROVISION

- Sec. 901. Study.

1 SEC. 2. FINDINGS AND PURPOSE.

- 2 (a) FINDINGS.—The Congress finds the following:

1 (1) Electricity is generated, transmitted, dis-
2 tributed, and sold in interstate commerce and used
3 in virtually every home, commercial enterprise, and
4 manufacturing facility in the United States and sub-
5 stantially affects interstate commerce in other goods
6 and services.

7 (2) Americans consume electricity worth more
8 than \$250,000,000,000 a year, approximately half of
9 which is for residential purposes. The monthly elec-
10 tric utility bill is one of the largest expenses for most
11 households.

12 (3) Traditional monopoly rate-of-return regula-
13 tion of electricity has stifled competition, resulting in
14 high electricity rates for many consumers and few
15 incentives for technological innovation and good cus-
16 tomer service by electric utilities.

17 (4) Twenty-four States, representing over
18 163,000,000 people and over 60 percent of the pop-
19 ulation of the United States, have approved pro-
20 grams to foster retail choice in electric sales. State
21 laws forging the dramatic transition to competitive
22 retail electric markets have addressed stranded cost
23 recovery, public benefits, and other issues and Con-
24 gress encourages the remaining States to address

1 stranded cost recovery as they open their retail elec-
2 tric markets.

3 (5) High electricity rates are regressive, placing
4 a disproportionate burden on poor ratepayers. A
5 competitive electric generation industry will provide
6 benefits to all consumers by fostering fairness, inno-
7 vation, and efficiency, rather than allow cost shifting
8 that lowers rates to some consumers but raises rates
9 to others.

10 (6) The cost of electricity has a direct effect on
11 the price, profitability, and competitiveness of goods
12 and services produced in the United States.

13 (7) Lower priced electricity and improved reli-
14 ability can be realized by competition among electric
15 suppliers.

16 (8) The development of vigorous competition in
17 the retail market for electric energy will—

18 (A) reduce the costs of electric energy to
19 even the smallest consumers of electricity;

20 (B) create jobs as American businesses are
21 able to lower costs and better compete in world
22 markets and against foreign competition here at
23 home; and

24 (C) result in a more efficient utility indus-
25 try.

1 (9) Federal programs to benefit rural con-
2 sumers have succeeded, and rural America has been
3 electrified. However, rural America pays some of the
4 highest electric rates in the country. Competition
5 will assure reliable, reasonably priced rural electric
6 service.

7 (10) The Nation's interconnected electricity
8 generation, transmission, and local distribution sys-
9 tems critically affect the economy and productivity
10 of the United States, and the health, safety, welfare,
11 and security of all Americans.

12 (11) Congress has authority to enact laws,
13 under the Commerce Clause of the United States
14 Constitution, regarding the generation, transmission,
15 distribution, and sale of electric energy in interstate
16 commerce.

17 (12) The success of competition in the whole-
18 sale electric market under the Energy Policy Act of
19 1992 and open access under Orders No. 888 and
20 889 of the Federal Energy Regulatory Commission,
21 as well as innovations in electric generation and
22 transmission technologies, indicate that retail elec-
23 tric competition will substantially benefit all classes
24 of United States electric consumers, including resi-
25 dential, commercial, industrial, and other consumers.

1 (b) PURPOSE.—The purpose of this Act is to benefit
2 American electric consumers through lower electric rates,
3 higher quality services, and a more robust United States
4 economy by encouraging retail and wholesale competition
5 in electric markets and to provide consumers with reliable
6 electric service, and for other purposes.

7 **TITLE I—OPEN TRANSMISSION**
8 **ACCESS**

9 **SEC. 101. CLARIFICATION OF STATE AUTHORITY REGARD-**
10 **ING RETAIL ELECTRIC COMPETITION; CLARI-**
11 **FICATION OF FEDERAL AND STATE JURISDIC-**
12 **TION.**

13 (a) STATE AUTHORITY TO ORDER RETAIL ELECTRIC
14 COMPETITION.—Section 201(b) of the Federal Power Act
15 is amended by adding the following new paragraph after
16 paragraph (2):

17 “(3) This Act shall not affect the authority of a State
18 or municipality to require retail electric competition or to
19 require unbundled transmission and local distribution
20 service for the delivery of electric energy directly to a retail
21 electric consumer.”.

22 (b) CLARIFICATION OF FEDERAL AND STATE JURIS-
23 DICTION.—(1) Section 201(a) of the Federal Power Act
24 (16 U.S.C. 824(a)) is amended as follows:

1 (A) By inserting after “transmission of electric
2 energy in interstate commerce” the following: “, in-
3 cluding the unbundled transmission of electric en-
4 ergy sold at retail,”.

5 (B) By striking “such Federal regulation, how-
6 ever, to extend only to those matters which are not
7 subject to regulation by the States.” and inserting in
8 lieu thereof “such Federal regulation shall not ex-
9 tend, however, to any bundled retail sale of electric
10 energy, to any local distribution service component
11 of any unbundled retail sale of electric energy, or to
12 any retail sale component of any unbundled retail
13 sale of electric energy, which are each subject to reg-
14 ulation by the States.”.

15 (2) Section 201(b)(1) of the Federal Power Act (16
16 U.S.C. 824(b)(1)) is amended as follows:

17 (A) Inserting after “the transmission of electric
18 energy in interstate commerce” the following: “, in-
19 cluding the unbundled transmission of electric en-
20 ergy sold at retail,”.

21 (B) In the last sentence, deleting “the trans-
22 mission of electric energy in intrastate commerce”,
23 and inserting in lieu thereof “the transmission of
24 any bundled retail sale of electric energy”.

1 (c) DEFINITIONS OF TYPES OF SALES.—Section 3 of
2 the Federal Power Act (16 U.S.C. 796) is amended by
3 adding at the end the following:

4 “(27) The term ‘bundled retail sale of electric
5 energy’ means the sale of electric energy to a retail
6 electric consumer in which the electric energy and
7 transmission services are not sold separately.

8 “(28) The term ‘local distribution service’
9 means all services necessary to, or customarily pro-
10 vided in, the delivery of electric energy to a retail
11 electric consumer through local distribution facilities,
12 including the construction, maintenance, and oper-
13 ation of local distribution facilities, the metering and
14 billing of retail sales, and any related accounting,
15 management, and other services.

16 “(29) The term ‘unbundled retail sale of elec-
17 tric energy’ means the sale of electric energy to a re-
18 tail electric consumer in which electric energy and
19 transmission service or local distribution service are
20 sold separately.

21 “(30) The term ‘unbundled transmission of
22 electric energy sold at retail’ means the transmission
23 of electric energy to a retail electric consumer if the
24 electric energy and the service of transmitting it are
25 sold separately.”.

1 (d) STATE PUBLIC PURPOSE CHARGES.—Section
2 201(b) of the Federal Power Act is amended by adding
3 the following new paragraph after paragraph (3):

4 “(4) This Act shall not affect the authority of a State
5 or municipality to require as a charge for delivery of elec-
6 tric energy to, or as a condition for the purchase or receipt
7 of electric energy by, any retail electric consumer located
8 in such State the payment of any charge deemed necessary
9 by such State or municipality for any purpose, including
10 any of the following:

11 “(A) To recover transition costs.

12 “(B) To ensure that adequate electric service is
13 available to all retail electric consumers served by a
14 local distribution company.

15 “(C) To ensure and enhance the reliability of
16 retail electric service.

17 “(D) To fund assistance to low-income retail
18 electric consumers.

19 “(E) To encourage environmental, emerging en-
20 ergy technology, energy efficiency, or energy con-
21 servation programs.

22 “(F) To provide for transition costs of electric
23 utility workers.

24 Nothing in this paragraph shall require a State or munic-
25 ipality to impose any such charges.”.

1 (e) DETERMINATION OF TRANSMISSION FACILI-
2 TIES.—Section 201 of the Federal Power Act is amended
3 by adding the following new subsection at the end thereof:

4 “(h) DETERMINATION OF TRANSMISSION FACILI-
5 TIES.—

6 “(1) DETERMINATION.—A State commission, a
7 transmitting utility, or a local distribution company
8 may apply to the Commission for a determination
9 whether a particular facility used for the transpor-
10 tation of electric energy is a transmission facility
11 subject to the jurisdiction of the Commission. The
12 Commission may make such determination pursuant
13 to such a request or on its own motion.

14 “(2) COMMISSION FINDINGS.—The Commission
15 shall make a determination under paragraph (1) in
16 accordance with the following factors associated with
17 the facility:

18 “(A) Function and purpose.

19 “(B) Size.

20 “(C) Location.

21 “(D) Voltage level and other technical
22 characteristics.

23 “(E) Historical, current and planned usage
24 patterns.

1 “(F) Interconnection and coordination with
2 other facilities.

3 “(G) Any other factor the Commission
4 deems relevant.

5 In making such determination, the Commission shall
6 give deference to any position taken by the appro-
7 priate State commission.”.

8 **SEC. 102. OPEN ACCESS FOR ALL TRANSMITTING UTILI-**
9 **TIES.**

10 (a) OPEN ACCESS TRANSMISSION AUTHORITY; RE-
11 TAIL WHEELING IN RETAIL COMPETITION STATES.—

12 (1) APPLICABILITY OF OPEN ACCESS TRANS-
13 MISSION RULES.—Section 206 of the Federal Power
14 Act is amended by adding the following new sub-
15 section after subsection (d):

16 “(e) OPEN ACCESS TRANSMISSION SERVICES.—
17 Under section 205 and this section, the Commission may
18 require, by rule or order, transmitting utilities to provide
19 transmission services on a not unduly discriminatory or
20 preferential basis, subject to section 212(h), and may au-
21 thorize recovery of stranded costs, as defined by the Com-
22 mission, arising from any requirement to provide trans-
23 mission services on such a basis. This subsection applies
24 to any rule or order promulgated by the Commission be-

1 fore, on, or after the date of enactment of this sub-
2 section.”.

3 (2) AUTHORITY TO ORDER RETAIL WHEEL-
4 ING.—Section 212(h) of the Federal Power Act is
5 amended as follows:

6 (A) By inserting “(1)” before “No”.

7 (B) By striking “(1)”, “(2)”, “(A)”, and
8 “(B)” and inserting in their places “(A)”,
9 “(B)”, “(i)”, and “(ii)” respectively.

10 (C) By striking from redesignated para-
11 graph (1)(B)(ii) “the date of enactment of this
12 subsection” and inserting “October 24, 1992,”.

13 (D) By adding the following new para-
14 graph at the end:

15 “(2) Notwithstanding paragraph (1), the Commission
16 may issue an order that requires the transmission of elec-
17 tric energy directly or indirectly to retail electric con-
18 sumers who are served by local distribution facilities that
19 are subject to open access.”.

20 (3) CONFORMING AMENDMENTS.—

21 (A) Section 3(24) of the Federal Power
22 Act is amended to read as follows:

23 “(24) ‘transmission services’ means the trans-
24 mission of electric energy sold or to be sold.”.

1 (B) Section 211(a) of the Federal Power
2 Act is amended by striking “for resale”.

3 (C) Section 212(a) of the Federal Power
4 Act is amended by striking “wholesale” each
5 time it appears, except the last time.

6 (D) Section 3 of the Federal Power Act is
7 amended by adding the following at the end
8 thereof:

9 “(26) LOCAL DISTRIBUTION COMPANY.—The
10 term ‘local distribution company’ means any entity
11 which owns, controls, or operates local distribution
12 facilities.

13 “(27) LOCAL DISTRIBUTION FACILITIES.—The
14 term ‘local distribution facilities’ means any facilities
15 used for the local distribution of electric energy.
16 Such term does not include any facilities determined
17 under section 201(h) to be transmission facilities.

18 “(28) OPEN ACCESS.—The term ‘open access’,
19 with respect to local distribution facilities, means
20 that the local distribution company that owns, con-
21 trols, or operates the facilities offers not unduly dis-
22 criminatory or preferential access to the facilities.

23 “(29) RETAIL ELECTRIC CONSUMER.—The
24 term ‘retail electric consumer’ means any person

1 who purchases electric energy for ultimate consump-
2 tion.

3 “(30) RETAIL ELECTRIC SUPPLIER.—The term
4 ‘retail electric supplier’ means any person who sells
5 electric energy to a retail electric consumer for ulti-
6 mate consumption.

7 “(31) STATE REGULATED ELECTRIC UTILITY.—
8 The term ‘State regulated electric utility’ means any
9 electric utility with respect to which a State commis-
10 sion has ratemaking authority.”.

11 (b) DEFINITION OF PUBLIC UTILITY.—Section
12 201(e) of the Federal Power Act (16 U.S.C. 824(e)) is
13 amended to read as follows:

14 “(e) DEFINITION OF PUBLIC UTILITY.—(1) The
15 term ‘public utility’, when used in this Part and Part III,
16 means:

17 “(A) Any person who owns or operates facilities
18 subject to the jurisdiction of the Commission under
19 this part (other than facilities subject to such juris-
20 diction solely by reason of section 210, 211, or 212).

21 “(B) Any transmitting utility (other than the
22 Federal power marketing administrations and the
23 Tennessee Valley Authority) that is not a public util-
24 ity within the meaning of paragraph (1), but only
25 with respect to determining, fixing, and otherwise

1 regulating the rates, terms, and conditions for the
2 transmission of electric energy in interstate com-
3 merce.

4 “(2)(A) Within 180 days after the enactment of this
5 subsection, after notice and opportunity for comment, the
6 Commission shall adopt rules providing criteria and proce-
7 dures to exempt certain transmitting utilities from para-
8 graph (1)(B).

9 “(B) The criteria established by the Commission
10 under this paragraph may include whether the transmit-
11 ting utility owns, operates, or controls only limited and
12 discrete transmission facilities that do not form an inte-
13 grated grid; whether the transmitting utility is a small
14 public utility not part of a centrally dispatched power pool
15 and any other circumstances which the Commission finds
16 appropriate. Such criteria may provide for revocation of
17 an exemption in the event of changed circumstances. The
18 Commission may from time to time, after notice and op-
19 portunity for comment, modify its exemption criteria.

20 “(C) The procedures established by the Commission
21 shall permit exemptions, after notice and opportunity for
22 comment, based on a letter application containing a sworn
23 statement, by a representative legally authorized to bind
24 the applicant, attesting to the facts demonstrating that
25 the applicant meets the exemption standards. A good faith

1 application for an exemption shall be deemed granted un-
2 less, within 60 days of its receipt of such application, the
3 Commission makes a determination that the applicant
4 does not meet the exemption criteria.

5 “(D) For purposes of this paragraph, the term ‘small
6 public utility’ means a public utility that sells no more
7 than 4,000,000 megawatt-hours of electric energy per
8 year.”.

9 (c) NONJURISDICTIONAL STATUS RESULTING FROM
10 COMPLIANCE WITH ORDERS UNDER SECTIONS 210 AND
11 211; LIMITATION.—Section 201(b)(2) of the Federal
12 Power Act (16 U.S.C. 824(b)(2)) is amended by striking
13 the period at the end of the second sentence and inserting
14 the following: “except with respect to determining, fixing,
15 and otherwise regulating the rates, terms, and conditions
16 for the transmission of electric energy under this part pur-
17 suant to subsection (e)(2).”.

18 (d) DEFINITION.—Section 3(23) of the Federal
19 Power Act (16 U.S.C. 796) is amended to read as follows:

20 “(23) TRANSMITTING UTILITY.—The term
21 ‘transmitting utility’ means any entity (including a
22 State or municipal entity) that owns or operates fa-
23 cilities used for the transmission of electric energy in
24 interstate commerce (other than facilities subject to

1 an order of the Commission under section 210 or
2 211).”.

3 (e) FOREIGN COMMERCE.—

4 (1) Section 201(c) of the Federal Power Act
5 (16 U.S.C. 824(c)) is amended by striking “there-
6 of:” and inserting “thereof (including consumption
7 in a foreign country),”.

8 (2) Section 202(f) of the Federal Power Act is
9 repealed.

10 **SEC. 103. REGIONAL TRANSMISSION ORGANIZATIONS.**

11 Section 202 of the Federal Power Act is amended by
12 adding the following new subsections after subsection (g):

13 “(h) REGIONAL TRANSMISSION ORGANIZATIONS.—

14 “(1) IN GENERAL.—Effective January 1, 2003,
15 each transmitting utility shall establish or join a re-
16 gional transmission organization. By January 1,
17 2002, each such utility shall file an application with
18 the Commission to establish or join a regional trans-
19 mission organization. After notice and an oppor-
20 tunity for a hearing, the Commission shall approve
21 an application by one or more transmitting utilities
22 to establish or join a regional transmission organiza-
23 tion if the Commission determines the regional
24 transmission organization meets the standards in
25 paragraph (2). The Commission shall apply the

1 standards in paragraph (2) without regard to the
2 specific structure, type, or form of proposed regional
3 transmission organization. If a transmitting utility
4 applies to establish or join a regional transmission
5 organization that meets the standards in paragraph
6 (2), the Commission shall have no authority under
7 this subsection to require the transmitting utility to
8 participate in a different regional transmission orga-
9 nization. The Commission may approve a regional
10 transmission organization that does not meet all the
11 standards in paragraph (2) if the Commission deter-
12 mines that the regional transmission organization
13 contains features that are consistent with or supe-
14 rior to the standards listed in paragraph (2). The
15 requirement that a transmitting utility establish or
16 join a regional transmission organization shall be
17 stayed pending any proceeding under this section or
18 section 313.

19 “(2) STANDARDS FOR REGIONAL TRANSMISSION
20 ORGANIZATIONS.—The Commission shall make a de-
21 termination under paragraph (1) in accordance with
22 the following standards:

23 “(A) INDEPENDENCE.—The regional
24 transmission organization must be independent
25 of all market participants, and no market par-

1 participant may exercise control over the operation
2 of the regional transmission organization. For
3 purposes of determining whether a regional
4 transmission organization is independent of all
5 market participants, ownership of passive, non-
6 voting interests in a regional transmission orga-
7 nization, or ownership of 10 percent or less of
8 the voting interests in the regional transmission
9 organization, shall be deemed not to confer con-
10 trol over the regional transmission organization
11 for purposes of this subparagraph. For pur-
12 poses of this subparagraph, the term ‘voting in-
13 terest’ shall not include the right to participate
14 in major organic corporate changes to the re-
15 gional transmission organization that affect the
16 ownership status of the nonvoting interests.

17 “(B) SCOPE AND CONFIGURATION.—The
18 regional transmission organization must operate
19 transmission facilities that comprise an appro-
20 priate scope and regional configuration. In de-
21 termining whether a regional transmission orga-
22 nization contains an appropriate scope and con-
23 figuration, the Commission shall consider the
24 following factors:

1 “(i) Performance of essential regional
2 transmission organization functions.

3 “(ii) Electricity trading patterns.

4 “(iii) Exercise of market power not
5 subject to State regulation.

6 “(iv) Existing control areas.

7 “(v) Existing regional transmission
8 entities.

9 “(vi) Contiguity of geographic area.

10 “(vii) Interconnection of regional
11 transmission organization transmission
12 systems.

13 “(viii) International boundaries.

14 “(C) OPERATIONAL AUTHORITY.—The re-
15 gional transmission organization must possess
16 operational authority over all transmission fa-
17 cilities under its control.

18 “(D) EXPANSION.—The regional trans-
19 mission organization must be responsible for
20 planning necessary additions and upgrades to
21 the transmission system under the operational
22 control of the regional transmission organiza-
23 tion that will enable it to provide efficient, reli-
24 able, not unduly discriminatory or preferential

1 transmission service and coordinating such ef-
2 forts with the appropriate State authorities.

3 “(E) OTHER STANDARDS.—The regional
4 transmission organization shall meet any other
5 standards that the Commission determines to
6 be in the public interest.

7 “(3) FEDERAL TRANSMITTING UTILITIES.—The
8 Tennessee Valley Authority, the Bonneville Power
9 Administration, the Southwestern Power Adminis-
10 tration, and the Western Area Power Administration
11 are each authorized to participate in a regional
12 transmission organization after conducting a public
13 process in the relevant region to receive comments.
14 Notwithstanding any other law, participation may
15 include delegation of operation and control of the
16 transmission system concerned to a regional trans-
17 mission organization or other method of participa-
18 tion, under terms and conditions the Tennessee Val-
19 ley Authority or the power marketing administration
20 concerned determines necessary or appropriate, in-
21 cluding being bound by operational and other orders
22 of the regional transmission organization and by the
23 results of arbitration of disputes with the organiza-
24 tion or with other participants.

1 “(4) STATE AUTHORITY NOT AFFECTED.—
2 Nothing in this subsection limits States from ad-
3 dressing transmission facility maintenance, planning,
4 siting, and other utility functions in a manner con-
5 sistent with this Act or Commission action under
6 this Act.

7 “(5) EXISTING REGIONAL TRANSMISSION ORGA-
8 NIZATION.—Nothing in this subsection authorizes
9 the Commission to require any change in a regional
10 transmission organization or comparable organiza-
11 tion approved by the Commission before the date of
12 enactment of this subsection.

13 “(6) INCENTIVE TRANSMISSION PRICING POLI-
14 CIES.—The Commission shall encourage incentive
15 transmission pricing policies for regional trans-
16 mission organizations approved under paragraph (1)
17 and comparable transmission organizations approved
18 by the Commission before enactment of this sub-
19 section. Such pricing policies include policies that—

20 “(A) provide incentives to transmitting
21 utilities to promote the formation of regional
22 transmission organizations, and extend such in-
23 centives to transmitting utilities that already
24 have formed a regional transmission organiza-
25 tion;

1 “(B) limit the charging of multiple rates
2 for transmission service over the transmission
3 facilities operated by the regional transmission
4 organization, except that a reasonable transi-
5 tion period may be used before eliminating such
6 rates;

7 “(C) minimize the shifting of costs among
8 existing customers of the transmitting utilities
9 within the regional transmission organization;

10 “(D) encourage the efficient and reliable
11 operation of the transmission system and sup-
12 ply of transmission services through congestion
13 management, performance-based or incentive
14 ratemaking, and other measures; and

15 “(E) encourage efficient and adequate in-
16 vestment in and expansion of the transmission
17 facilities owned or controlled by the regional
18 transmission organization.

19 “Within 180 days after enactment of this para-
20 graph, the Commission shall establish by rule defini-
21 tions and standards that it determines are necessary
22 to give effect to this paragraph.

23 “(7) WITHDRAWAL.—The Commission, after
24 notice and opportunity for comment, may withdraw
25 the approval for a regional transmission organization

1 if the Commission determines that the regional
2 transmission organization fails to comply with the
3 provisions of this subsection.”.

4 **SEC. 104. REGIONAL TRANSMISSION SITING AGENCIES.**

5 Part II of the Federal Power Act (16 U.S.C. 824 and
6 following) is amended by adding at the end the following
7 section:

8 **“SEC. 215. REGIONAL TRANSMISSION SITING AGENCIES.**

9 “(a) CONSENT.—The consent of Congress is given for
10 compacts among two or more States to establish regional
11 transmission siting agencies to—

12 “(1) facilitate coordination among the States
13 within a particular region with regard to the siting
14 of future transmission facilities;

15 “(2) carry out State transmission facility siting
16 responsibilities;

17 “(3) meet the other requirements of this section
18 and rules prescribed by the Commission under this
19 section; and

20 “(4) otherwise be consistent with the public in-
21 terest.

22 “(b) AUTHORITY.—If the Commission determines
23 that a compact meets the requirements of subsection (a),
24 the agency established under the compact has such au-
25 thority with respect to matters otherwise within the juris-

1 diction of the Commission as is expressly provided in the
2 compact and is necessary or appropriate for carrying out
3 the siting responsibilities of the agency. The Commission's
4 determination under this section may be subject to any
5 terms and conditions the Commission determines are nec-
6 essary or appropriate to ensure that the compact is in the
7 public interest.

8 “(c) RULES.—(1) The Commission shall prescribe by
9 rule—

10 “(A) criteria for determining whether a com-
11 pact is consistent with subsection (a); and

12 “(B) standards for its administration of a re-
13 gional transmission siting agency established under
14 the compact.

15 “(2) The rule shall require that—

16 “(A) a regional transmission siting agency oper-
17 ate within a region that includes all or part of each
18 State that is a party to the compact;

19 “(B) a regional transmission siting agency be
20 composed of one or more members from each State
21 that is a party to the compact;

22 “(C) each participating State vest in the re-
23 gional transmission siting agency the authority to
24 carry out the compact and this section; and

1 “(D) the agency follow reasonable procedures in
2 making its decisions, in governing itself, and in car-
3 rying out its authorities under the compact, includ-
4 ing judicial review.

5 “(3) The rule may include any other requirement to
6 ensure that the regional transmission siting agency’s orga-
7 nization, practices, and procedures are sufficient to carry
8 out this section and the rules promulgated under it.

9 “(d) TERMINATION.—The Commission, after notice
10 and opportunity for comment, may terminate the approval
11 of a compact under this section at any time if it deter-
12 mines that the regional transmission siting agency fails
13 to comply with the provisions of this section or Commis-
14 sion rules under subsection (c) or that the compact is con-
15 trary to the public interest.”.

16 **SEC. 105. EXPANSION OF INTERSTATE TRANSMISSION FA-**
17 **CILITIES.**

18 Part II of the Federal Power Act (16 U.S.C. 824 and
19 following) is amended by adding at the end the following
20 section:

21 **“SEC. 216. EXPANSION OF INTERSTATE TRANSMISSION FA-**
22 **CILITIES.**

23 “(a) COMMISSION AUTHORITY.—Upon the applica-
24 tion of an electric utility or transmitting utility, if the
25 Commission determines, after notice and opportunity for

1 hearing, that such action is in the public interest, it may
2 issue an order requiring a transmitting utility to enlarge,
3 extend, or improve its facilities for the transmission of
4 electric energy in interstate commerce. The transmitting
5 utility ordered to enlarge, extend, or improve its facilities
6 may apply to the Commission for an order terminating
7 or modifying the order if the transmitting utility dem-
8 onstrates, and the Commission determines, that the trans-
9 mitting utility has failed, after making a good faith effort,
10 to obtain the necessary approvals or property rights under
11 applicable Federal, State, and local laws.

12 “(b) COMPLIANCE WITH OTHER LAWS.—Commis-
13 sion action under this section shall be subject to the Na-
14 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
15 and following) and all other applicable State and Federal
16 laws. This section does not affect the authority of States
17 or political subdivisions of States to site transmission fa-
18 cilities under applicable State and local laws.

19 “(c) USE OF JOINT BOARDS.—Before issuing an
20 order under subsection (a), the Commission shall refer the
21 matter to a joint board for advice and recommendations
22 on the need for, design of, and location of the proposed
23 enlargement, extension, or improvement. The Commission
24 shall consider the advice and recommendations of such
25 board before ordering any such enlargement, extension, or

1 improvement. Any such board shall be composed of a
2 member or members, as determined by the Commission,
3 from the State or each of the States affected or to be af-
4 fected by such matter, from each Federal agency affected
5 or to be affected by such matter, and from the Commis-
6 sion. Any such board shall be vested with the same power
7 and be subject to the same duties and liabilities as in the
8 case of a member of the Commission when designated to
9 hold any hearings. The action of such board shall have
10 such force and effect and its proceedings shall be con-
11 ducted in such manner as the Commission shall by regula-
12 tions provide. The State member or members of such
13 board shall be appointed by the Commission from persons
14 nominated by the State commission of each State affected,
15 or by the Governor of such State if there is no State com-
16 mission. Each State affected shall be entitled to the same
17 number of representatives on the board unless the nomi-
18 nating power of such State waives such right. The Com-
19 mission shall have the discretion to reject the nominee
20 from any State, but shall thereupon invite a new nomina-
21 tion from that State. The Federal member or members
22 from agencies other than the Commission shall be ap-
23 pointed by the Commission in consultation with the head
24 of such agency or agencies. The Commission member or
25 members of such board shall be appointed by the chair-

1 man, in consultation with the Commission. The Commis-
2 sion may, when in its discretion sufficient reason exists
3 therefor, terminate such a board.

4 “(d) LIMITATION ON AUTHORITY.—The Commission
5 shall have no authority to compel a transmitting utility
6 to extend or improve its transmission facilities if such en-
7 largement, extension, or improvement would unreasonably
8 impair the ability of the transmitting utility to provide
9 adequate service to its customers.”.

10 **SEC. 106. CONFORMING AMENDMENTS.**

11 (a) ENFORCEMENT.—Subsections (a) and (b) of sec-
12 tion 316A of the Federal Power Act (16 U.S.C. 791a) are
13 each amended by striking “section 211, 212, 213, or
14 214,” in each place such phrase appears and inserting
15 “part II”.

16 (b) COMPLAINTS.—Section 306 of the Federal Power
17 Act is amended by inserting “agency or instrumentality
18 of the United States,” after “person,” in the first sentence
19 and by inserting “, electric utility, transmitting utility”
20 after “licensee” in each place it appears.

21 (c) REVIEW OF COMMISSION ORDERS.—Section 313
22 of the Federal Power Act is amended by inserting “agency
23 or instrumentality of the United States,” after “person,”
24 in the first sentence in subsection (a).

1 (d) TECHNICAL CORRECTIONS.—(1) Section 211(c)
2 of the Federal Power Act is amended by striking “(2)”
3 and by redesignating subparagraphs (A) and (B) as para-
4 graphs (1) and (2) and by striking “termination of modi-
5 fication” and inserting “termination or modification”.

6 (2) Section 315 of the Federal Power Act is amended
7 by striking “subsection” and inserting “section”.

8 **TITLE II—ELECTRIC** 9 **RELIABILITY**

10 **SEC. 201. ELECTRIC RELIABILITY.**

11 Part II of the Federal Power Act (16 U.S.C. 824 and
12 following) is amended by adding at the end the following
13 section:

14 **“SEC. 217. ELECTRIC RELIABILITY ORGANIZATION AND** 15 **OVERSIGHT.**

16 “(a) DEFINITIONS.—As used in this section:

17 “(1) AFFILIATED REGIONAL RELIABILITY ENTI-
18 TY.—The term ‘affiliated regional reliability entity’
19 means an entity delegated authority under the provi-
20 sions of subsection (h).

21 “(2) BULK-POWER SYSTEM.—The term ‘bulk-
22 power system’ means all facilities and control sys-
23 tems necessary for operating an interconnected
24 transmission grid (or any portion thereof), including
25 high-voltage transmission lines, substations, control

1 centers, communications, data, and operations plan-
2 ning facilities, and the output of generating units
3 necessary to maintain transmission system reli-
4 ability.

5 “(3) ELECTRIC RELIABILITY ORGANIZATION.—
6 The term ‘electric reliability organization’ means the
7 organization approved by the Commission under
8 subsection (d)(4).

9 “(4) ENTITY RULE.—The term ‘entity rule’
10 means a rule adopted by an affiliated regional reli-
11 ability entity for a specific region and designed to
12 implement or enforce one or more organization
13 standards. An entity rule shall be subject to ap-
14 proval by the electric reliability organization and
15 once approved, shall be treated as an organization
16 standard.

17 “(5) INDUSTRY SECTOR.—The term ‘industry
18 sector’ means a group of users of the bulk power
19 system with substantially similar commercial inter-
20 ests, as determined by the board of the electric reli-
21 ability organization.

22 “(6) INTERCONNECTION.—The term ‘inter-
23 connection’ means a geographic area in which the
24 operation of bulk-power system components is syn-
25 chronized such that the failure of one or more of

1 such components may adversely affect the ability of
2 the operators of other components within the inter-
3 connection to maintain safe and reliable operation of
4 the facilities within their control.

5 “(7) ORGANIZATION STANDARD.—The term ‘or-
6 ganization standard’ means a policy or standard
7 duly adopted by the electric reliability organization
8 to provide for the reliable operation of a bulk power
9 system.

10 “(8) PUBLIC INTEREST GROUP.—The term
11 ‘public interest group’ means any nonprofit private
12 or public organization that has an interest in the ac-
13 tivities of the electric reliability organization, includ-
14 ing, but not limited to, ratepayer advocates, environ-
15 mental groups, and State and local government or-
16 ganizations that regulate market participants and
17 promulgate government policy.

18 “(9) SYSTEM OPERATOR.—The term ‘system
19 operator’ means any entity that operates or is re-
20 sponsible for the operation of a bulk-power system,
21 including a control area operator, an independent
22 system operator, a transmission company, a trans-
23 mission system operator, or a regional security coor-
24 dinator.

1 “(10) USER OF THE BULK-POWER SYSTEM.—

2 The term ‘user of the bulk-power system’ means any
3 entity that sells, purchases, or transmits electric en-
4 ergy over a bulk-power system, or that owns, oper-
5 ates or maintains facilities or control systems that
6 are part of a bulk-power system, or that is a system
7 operator.

8 “(11) VARIANCE.—The term ‘variance’ means
9 an exception or variance from the requirements of
10 an organization standard (including a proposal for
11 an organization standard where there is no organiza-
12 tion standard) that is adopted by an affiliated re-
13 gional reliability entity and applicable to all or a
14 part of the region for which the affiliated regional
15 reliability entity is responsible. A variance shall be
16 subject to approval by the electric reliability organi-
17 zation and once approved, shall be treated as an or-
18 ganization standard.

19 “(b) COMMISSION AUTHORITY.—(1) Within the
20 United States, the Commission shall have jurisdiction over
21 the electric reliability organization, all affiliated regional
22 reliability entities, all system operators, and all users of
23 the bulk-power system, for purposes of approving and en-
24 forcing compliance with the requirements of this section.

1 “(2) The Commission may, by rule, define any other
2 term used in this section, provided such definition is con-
3 sistent with the definitions in, and the purpose and intent
4 of, this Act.

5 “(c) EXISTING RELIABILITY STANDARDS.—Fol-
6 lowing enactment of this section, and prior to the approval
7 of the electric reliability organization under subsection (d),
8 any person, including the North American Electric Reli-
9 ability Council and its member regional reliability councils,
10 shall file with the Commission any reliability standard,
11 guidance or practice, or any amendment thereto, that the
12 person would propose to be made mandatory and enforce-
13 able. The Commission, after allowing interested persons
14 an opportunity to submit comments, may approve any
15 such proposed mandatory standard, guidance or practice,
16 or any amendment thereto, if it finds that the standard,
17 guidance, or practice, or amendment is just, reasonable,
18 not unduly discriminatory or preferential, and in the pub-
19 lic interest. Filed standards, guidances, or practices, in-
20 cluding any amendments thereto, shall be mandatory and
21 applicable according to their terms following approval by
22 the Commission and shall remain in effect until—

23 “(1) withdrawn, disapproved or superseded by
24 an organization standard, issued or approved by the

1 electric reliability organization and made effective by
2 the Commission under subsection (e); or

3 “(2) disapproved or suspended by the Commis-
4 sion if, upon complaint or upon its own motion and
5 after notice and opportunity for comment, the Com-
6 mission finds the standard, guidance or practice un-
7 just, unreasonable, unduly discriminatory or pref-
8 erential, or not in the public interest.

9 Standards, guidances or practices in effect pursuant to the
10 provisions of this subsection shall be enforceable by the
11 Commission.

12 “(d) ORGANIZATION APPROVAL.—(1) Not later than
13 90 days after the date of enactment of this section, the
14 Commission shall issue proposed rules specifying proce-
15 dures and requirements for an entity to apply for approval
16 as the electric reliability organization. The Commission
17 shall provide notice and opportunity for comment on the
18 proposed rules. The Commission shall promulgate a final
19 rule under this subsection within 180 days after the date
20 of enactment of this section.

21 “(2) Following the issuance of a final Commission
22 rule under paragraph (1), an entity may submit an appli-
23 cation to the Commission for approval as the electric reli-
24 ability organization. The applicant shall specify in its ap-

1 plication its governance and procedures, as well as its
2 funding mechanism and initial funding requirements.

3 “(3) The Commission shall provide public notice of
4 the application and afford interested parties an oppor-
5 tunity to comment.

6 “(4) The Commission shall approve the application
7 if the Commission determines that the applicant—

8 “(A) has the ability to develop, implement and
9 enforce standards that provide for an adequate level
10 of reliability of the bulk-power system;

11 “(B) permits voluntary membership to any user
12 of the bulk-power system or public interest group;

13 “(C) assures fair representation of its members
14 in the selection of its directors and fair management
15 of its affairs, taking into account the need for effi-
16 ciency and effectiveness in decisionmaking and oper-
17 ations and the requirements for technical com-
18 petency in the development of organization stand-
19 ards and the exercise of oversight of bulk-power sys-
20 tem reliability;

21 “(D) assures that no two industry sectors have
22 the ability to control, and no one industry sector has
23 the ability to veto, the electric reliability organiza-
24 tion’s discharge of its responsibilities (including ac-
25 tions by committees recommending standards to the

1 board or other board actions to implement and en-
2 force standards);

3 “(E) provides for governance by a board wholly
4 comprised of independent directors;

5 “(F) provides a funding mechanism and re-
6 quirements that are just, reasonable and not unduly
7 discriminatory or preferential and are in the public
8 interest, and which satisfy the requirements of sub-
9 section (I);

10 “(G) establishes procedures for development of
11 organization standards that provide reasonable no-
12 tice and opportunity for public comment, taking into
13 account the need for efficiency and effectiveness in
14 decisionmaking and operations and the requirements
15 for technical competency in the development of orga-
16 nization standards, and which standards develop-
17 ment process has the following attributes:

18 “(i) openness,

19 “(ii) balance of interests, and

20 “(iii) due process, except that the proce-
21 dures may include alternative procedures for
22 emergencies;

23 “(H) establishes fair and impartial procedures
24 for implementation and enforcement of organization
25 standards, either directly or through delegation to

1 an affiliated regional reliability entity, including the
2 imposition of penalties, limitations on activities,
3 functions, or operations, or other appropriate sanc-
4 tions;

5 “(I) establishes procedures for notice and op-
6 portunity for public observation of all meetings, ex-
7 cept that the procedures for public observation may
8 include alternative procedures for emergencies or for
9 the discussion of information the directors reason-
10 ably determine should take place in closed session,
11 such as litigation, personnel actions, or commercially
12 sensitive information;

13 “(J) provides for the consideration of rec-
14 ommendations of States and State commissions, and

15 “(K) addresses other matters that the Commis-
16 sion may deem necessary or appropriate to ensure
17 that the procedures, governance, and funding of the
18 electric reliability organization are just, reasonable,
19 not unduly discriminatory or preferential, and are in
20 the public interest.

21 “(5) The Commission shall approve only one electric
22 reliability organization. If the Commission receives two or
23 more timely applications that satisfy the requirements of
24 this subsection, the Commission shall approve only the ap-

1 plication it concludes will best implement the provisions
2 of this section.

3 “(e) ESTABLISHMENT OF AND MODIFICATIONS TO
4 ORGANIZATION STANDARDS.—(1) The electric reliability
5 organization shall file with the Commission any new or
6 modified organization standards, including any variances
7 or entity rules, and the Commission shall follow the proce-
8 dures under paragraph (2) for review of that filing.

9 “(2) Submissions under paragraph (1) shall include:

10 “(A) a concise statement of the purpose of the
11 proposal, and

12 “(B) a record of any proceedings conducted
13 with respect to such proposal.

14 The Commission shall provide notice of the filing of such
15 proposal and afford interested persons 30 days to submit
16 comments. The Commission, after taking into consider-
17 ation any submitted comments, shall approve or dis-
18 approve such proposal not later than 60 days after the
19 deadline for the submission of comments, except that the
20 Commission may extend the 60-day period for an addi-
21 tional 90 days for good cause, and except further that if
22 the Commission does not act to approve or disapprove a
23 proposal within the foregoing periods the proposal shall
24 go into effect subject to its terms, without prejudice to
25 the authority of the Commission thereafter to suspend or

1 modify the proposal in accordance with the standards and
2 requirements of this section. Proposals approved by the
3 Commission shall take effect according to their terms but
4 not earlier than 30 days after the effective date of the
5 Commission's order, except as provided in paragraph (3)
6 of this subsection.

7 “(3)(A) In the exercise of its review responsibilities
8 under this subsection, the Commission shall give due
9 weight to the technical expertise of the electric reliability
10 organization with respect to the content of a new or modi-
11 fied organization standard, but shall not defer to the orga-
12 nization with respect to the effect of the organization
13 standard on competition. The Commission shall approve
14 a proposed new or modified organization standard if it de-
15 termines the proposal to be just, reasonable, not unduly
16 discriminatory or preferential, and in the public interest.
17 The Commission, either upon complaint or upon its own
18 motion, shall suspend an existing organization standard,
19 if it determines the standard to be unjust, unreasonable,
20 unduly discriminatory or preferential or not in the public
21 interest. Upon suspension of such a standard, the Com-
22 mission shall establish an interim standard to apply until
23 a new or modified standard is approved.

24 “(B) An existing or proposed organization standard
25 which is disapproved or suspended in whole or in part by

1 the Commission shall be remanded to the electric reli-
2 ability organization for further consideration.

3 “(C) The Commission, on its own motion or upon
4 complaint, may direct the electric reliability organization
5 to develop an organization standard, including modifica-
6 tion to an existing organization standard, addressing a
7 specific matter by a date certain if the Commission con-
8 siderers such new or modified organization standard nec-
9 essary or appropriate to further the purposes of this sec-
10 tion. The electric reliability organization shall file any such
11 new or modified organization standard in accordance with
12 this subsection.

13 “(D) An affiliated regional reliability entity may pro-
14 pose a variance or entity rule under subsection (h)(3) to
15 the electric reliability organization. The affiliated regional
16 reliability entity may request that the electric reliability
17 organization expedite consideration of the proposal, and
18 shall file a notice of such request with the Commission,
19 if expedited consideration is necessary to provide for bulk-
20 power system reliability. If the electric reliability organiza-
21 tion fails to adopt the variance or entity rule, either in
22 whole or in part, the affiliated regional reliability entity
23 may request that the Commission review such action. If
24 the Commission determines, after its review of such a re-
25 quest, that the action of the electric reliability organiza-

1 tion did not conform to the applicable standards and pro-
2 cedures approved by the Commission, or if the Commis-
3 sion determines that the variance or entity rule is just,
4 reasonable, not unduly discriminatory or preferential, and
5 in the public interest, and that the electric reliability orga-
6 nization has unreasonably rejected the proposed variance
7 or entity rule, then the Commission may remand the pro-
8 posed variance or entity rule for further consideration by
9 the electric reliability organization or may direct the elec-
10 tric reliability organization or the affiliated regional reli-
11 ability entity to develop a variance or entity rule consistent
12 with that requested by the affiliated regional reliability en-
13 tity. Any such variance or entity rule proposed by an affili-
14 ated regional reliability entity shall be submitted to the
15 electric reliability organization for review and filing with
16 the Commission in accordance with the procedures speci-
17 fied in this subsection.

18 “(E) Notwithstanding any other provision of this sub-
19 section, a proposed organization standard or amendment
20 shall take effect according to its terms if the electric reli-
21 ability organization determines that an emergency exists
22 requiring that such proposed organization standard or
23 amendment take effect without notice or comment. The
24 electric reliability organization shall notify the Commission
25 immediately following such determination and shall file

1 such emergency organization standard or amendment with
2 the Commission not later than five days following such
3 determination and shall include in such filing an expla-
4 nation of the need for such emergency standard. Subse-
5 quently, the Commission shall provide notice of the organi-
6 zation standard or amendment for comment, and shall fol-
7 low the procedures set out in paragraphs (2) and (3) for
8 review of the new or modified organization standard. Any
9 such emergency organization standard that has gone into
10 effect shall remain in effect unless and until suspended
11 or disapproved by the Commission. If the Commission de-
12 termines at any time that the emergency organization
13 standard or amendment is not necessary, the Commission
14 may suspend such emergency organization standard or
15 amendment.

16 “(4) All users of the bulk-power system shall comply
17 with any organization standard that takes effect under
18 this section.

19 “(f) COORDINATION WITH CANADA AND MEXICO.—
20 The electric reliability organization shall take all appro-
21 priate steps to gain recognition in Canada and Mexico.
22 The United States shall use its best efforts to enter into
23 international agreements with the appropriate govern-
24 ments of Canada and Mexico to provide for effective com-
25 pliance with organization standards and to provide for the

1 effectiveness of the electric reliability organization in car-
2 rying out its mission and responsibilities. All actions taken
3 by the electric reliability organization, any affiliated re-
4 gional reliability entity, and the Commission shall be con-
5 sistent with the provisions of such international agree-
6 ments.

7 “(g) CHANGES IN PROCEDURES, GOVERNANCE, OR
8 FUNDING.—(1) The electric reliability organization shall
9 file with the Commission any proposed change in its proce-
10 dures, governance, or funding, or any changes in the affili-
11 ated regional reliability entity’s procedures, governance or
12 funding relating to delegated functions, and shall include
13 with the filing an explanation of the basis and purpose
14 for the change.

15 “(2) A proposed procedural change shall take effect
16 90 days after filing with the Commission if the change
17 constitutes a statement of policy, practice, or interpreta-
18 tion with respect to the meaning or enforcement of an ex-
19 isting procedure. Any other proposed procedural change
20 shall take effect only upon a finding by the Commission,
21 after notice and opportunity for comments, that the
22 change is just, reasonable, not unduly discriminatory or
23 preferential, is in the public interest, and satisfies the re-
24 quirements of subsection (d)(4).

1 “(3) A proposed change in governance or funding
2 shall not take effect unless the Commission finds that the
3 change is just, reasonable, not unduly discriminatory or
4 preferential, and is in the public interest, and satisfies the
5 requirements of subsection (d)(4).

6 “(4)(A) The Commission, either upon complaint or
7 upon its own motion, may suspend a procedure or govern-
8 ance or funding provision if it determines the procedure
9 or provision does not meet the requirements of subsection
10 (d)(4) or is unjust, unreasonable, unduly discriminatory
11 or preferential, or otherwise not in the public interest.
12 Upon such suspension the Commission shall establish an
13 interim procedure or governance or funding provision until
14 a new or modified procedure or governance or funding pro-
15 vision meeting the requirements of this subsection takes
16 effect.

17 “(B) The Commission, upon complaint or upon its
18 own motion, may require the electric reliability organiza-
19 tion to amend the procedures, governance or funding if
20 the Commission determines that the amendment is nec-
21 essary to meet the requirements of this section. The elec-
22 tric reliability organization shall file the amendment in ac-
23 cordance with paragraph (1) of this subsection.

24 “(h) DELEGATIONS OF AUTHORITY.—(1) The elec-
25 tric reliability organization shall, upon request by an enti-

1 ty, enter into an agreement with such entity for the dele-
2 gation of authority to implement and enforce compliance
3 with organization standards in a specified geographic area
4 if the electric reliability organization finds that the entity
5 requesting the delegation satisfies the requirements of
6 subsection (d)(4) (A), (B), (C), (D), (F), and (K), and
7 if the delegation promotes the effective and efficient imple-
8 mentation and administration of bulk-power system reli-
9 ability. The electric reliability organization may enter into
10 an agreement to delegate to the entity any other authority,
11 except that the electric reliability organization shall re-
12 serve the right to set and approve organization standards
13 for bulk-power system reliability.

14 “(2) The electric reliability organization shall file
15 with the Commission any agreement entered into under
16 this subsection and any information the Commission re-
17 quires with respect to the affiliated regional reliability en-
18 tity to which authority is to be delegated. The Commission
19 shall approve the agreement, following public notice and
20 opportunity for comment, if it finds that the agreement
21 meets the requirements of paragraph (1), and is just, rea-
22 sonable, not unduly discriminatory or preferential, and is
23 in the public interest. A proposed delegation agreement
24 with an affiliated regional reliability entity organized on
25 an interconnection-wide basis shall be rebuttably pre-

1 sumed by the Commission to promote the effective and
2 efficient implementation and administration of bulk-power
3 system reliability. No delegation by the electric reliability
4 organization shall be valid unless approved by the Com-
5 mission.

6 “(3)(A) A delegation agreement entered into under
7 this subsection shall specify the procedures for an affili-
8 ated regional reliability entity to propose entity rules or
9 variances for review by the electric reliability organization.
10 With respect to any such proposal that would apply on
11 an interconnection-wide basis, the electric reliability orga-
12 nization shall presume such proposal valid if made by an
13 interconnection-wide affiliated regional reliability entity
14 unless the electric reliability organization makes a written
15 finding that the proposal—

16 “(i) was not developed in a fair and open proc-
17 ess that provided an opportunity for all interested
18 parties to participate;

19 “(ii) has a significant adverse impact on reli-
20 ability or interstate commerce in other interconnec-
21 tions;

22 “(iii) fails to provide a level of bulk-power sys-
23 tem reliability within the interconnection such that
24 it would constitute a serious and substantial threat

1 to public health, safety, welfare, or national security;
2 or

3 “(iv) creates a serious and substantial burden
4 on competitive markets within the interconnection
5 that is not necessary for reliability.

6 “(B) With respect to any such proposal that would
7 apply only to part of an interconnection, the electric reli-
8 ability organization shall find such proposal valid if the
9 affiliated regional reliability entity or entities making the
10 proposal demonstrate that it—

11 “(i) was developed in a fair and open process
12 that provided an opportunity for all interested par-
13 ties to participate;

14 “(ii) would not have an adverse impact on
15 interstate commerce that is not necessary for reli-
16 ability;

17 “(iii) provides a level of bulk-power system reli-
18 ability adequate to protect public health, safety, wel-
19 fare, and national security, and would not have a
20 significant adverse impact on reliability; and

21 “(iv) in the case of a variance, is based on le-
22 gitimate differences between regions or between sub-
23 regions within the affiliated regional reliability enti-
24 ty’s geographic area.

1 The electric reliability organization shall approve or dis-
2 approve such proposal within 120 days, or the proposal
3 shall be deemed approved. Following approval of any such
4 proposal under this paragraph, the electric reliability orga-
5 nization shall seek Commission approval pursuant to sub-
6 section (e)(3). Affiliated regional reliability entities may
7 not make requests for approval directly to the Commission
8 except pursuant to subsection (e)(3)(D).

9 “(4) If an affiliated regional reliability entity re-
10 quests, consistent with paragraph (1), that the electric re-
11 liability organization delegate authority to it, but is unable
12 within 180 days to reach agreement with the electric reli-
13 ability organization with respect to such requested delega-
14 tion, such entity may seek relief from the Commission. If,
15 following notice and opportunity for comment, the Com-
16 mission determines that a delegation to the entity would
17 meet the requirements of subsection (1) above, and that
18 the delegation would be just, reasonable, not unduly dis-
19 criminatory or preferential, and in the public interest, and
20 that the electric reliability organization has unreasonably
21 withheld such delegation, the Commission may, by order,
22 direct the electric reliability organization to make such del-
23 egation.

24 “(5)(A) The Commission may, upon its own motion
25 or upon complaint, and with notice to the appropriate af-

1 affiliated regional reliability entity or entities, direct the
2 electric reliability organization to propose a modification
3 to an agreement entered into under this subsection if the
4 Commission determines that—

5 “(i) the affiliated regional reliability entity no
6 longer has the capacity to carry out effectively or ef-
7 ficiently its implementation or enforcement respon-
8 sibilities under that agreement, has failed to meet its
9 obligations under that agreement, or has violated
10 any provision of this section,

11 “(ii) the rules, practices, or procedures of the
12 affiliated regional reliability entity no longer provide
13 for fair and impartial discharge of its implementa-
14 tion or enforcement responsibilities under the agree-
15 ment,

16 “(iii) the geographic boundary of a regional
17 transmission organization approved by the Commis-
18 sion is not wholly within the boundary of an affili-
19 ated regional reliability entity and such difference is
20 inconsistent with the effective and efficient imple-
21 mentation and administration of bulk-power system
22 reliability, or

23 “(iv) the agreement is inconsistent with another
24 delegation agreement as a result of actions taken
25 under paragraph (4) of this subsection.

1 “(B) Following an order of the Commission issued
2 under subparagraph (A), the Commission may suspend
3 the affected agreement if the electric reliability organiza-
4 tion or the affiliated regional reliability entity does not
5 propose an appropriate and timely modification. If the
6 agreement is suspended, the electric reliability organiza-
7 tion shall assume the previously delegated responsibilities.
8 The Commission shall allow the electric reliability organi-
9 zation and the affiliated regional reliability entity an op-
10 portunity to appeal the suspension. Any such appeal shall
11 not stay the suspension unless directed by the Commission
12 or a reviewing court.

13 “(i) ORGANIZATION MEMBERSHIP.—Every system
14 operator shall be required to be a member of the electric
15 reliability organization and shall be required also to be a
16 member of any affiliated regional reliability entity oper-
17 ating under an agreement effective pursuant to subsection
18 (h) applicable to the region in which the system operator
19 operates or is responsible for operation of bulk-power sys-
20 tem facilities.

21 “(j) INJUNCTIONS AND DISCIPLINARY ACTION.—(1)
22 Consistent with the range of actions approved by the Com-
23 mission under subsection (d)(4)(H), the electric reliability
24 organization may impose a penalty, limit activities, func-
25 tions, or operations, or take such other disciplinary actions

1 the electric reliability organization finds appropriate
2 against a user of the bulk-power system if the electric reli-
3 ability organization, after notice and opportunity for inter-
4 ested parties to be heard, issues a finding in writing that
5 the user of the bulk-power system has violated an organi-
6 zation standard approved by the Commission. The electric
7 reliability organization shall immediately notify the Com-
8 mission of any disciplinary action imposed with respect to
9 an act or failure to act of a user of the bulk-power system
10 that affected or threatened to affect bulk-power system fa-
11 cilities located in the United States. The sanctioned party
12 shall have the right to seek suspension, modification, or
13 rescission of such disciplinary action by the Commission.
14 If the electric reliability organization finds it necessary to
15 prevent a serious threat to reliability, the organization
16 may seek injunctive relief in the United States district
17 court for the district in which the affected facilities are
18 located.

19 “(2) A disciplinary action taken under paragraph (1)
20 may take effect no earlier than 30 days after the electric
21 reliability organization files with the Commission its writ-
22 ten finding and record of proceedings before the electric
23 reliability organization and the Commission posts the or-
24 ganization’s written finding, unless the Commission, on its
25 own motion or upon petition by the user of the bulk-power

1 system which is the subject of the action, suspends the
2 action. The action shall remain in effect or remain sus-
3 pended until the Commission, after notice and opportunity
4 for hearing, affirms, sets aside, modifies, or reinstates the
5 action, but the Commission shall conduct such hearing
6 under procedures established to ensure expedited consider-
7 ation of the action taken.

8 “(3) The Commission, on its own motion or upon
9 complaint of any person, may order compliance with an
10 organization standard and may impose a penalty, limit ac-
11 tivities, functions, or operations, or take such other dis-
12 ciplinary action as the Commission finds appropriate,
13 against a user of the bulk-power system with respect to
14 actions affecting or threatening to affect bulk-power sys-
15 tem facilities located in the United States if the Commis-
16 sion finds, after notice and opportunity for a hearing, that
17 the user of the bulk-power system has violated or threat-
18 ens to violate an organization standard.

19 “(4) The Commission may take such action as is nec-
20 essary against the electric reliability organization or an af-
21 filiated regional reliability entity to assure compliance with
22 an organization standard, or any Commission order affect-
23 ing the electric reliability organization or an affiliated re-
24 gional reliability entity.

1 “(k) RELIABILITY REPORTS.—The electric reliability
2 organization shall conduct periodic assessments of the reli-
3 ability and adequacy of the interconnected bulk-power sys-
4 tem in North America and shall report annually to the
5 Secretary of Energy and the Commission its findings and
6 recommendations for monitoring or improving system reli-
7 ability and adequacy.

8 “(l) ASSESSMENT AND RECOVERY OF CERTAIN
9 COSTS.—The reasonable costs of the electric reliability or-
10 ganization, and the reasonable costs of each affiliated re-
11 gional reliability entity that are related to implementation
12 and enforcement of organization standards or other re-
13 quirements contained in a delegation agreement approved
14 under subsection (h), shall be assessed by the electric reli-
15 ability organization and each affiliated regional reliability
16 entity, respectively, taking into account the relationship of
17 costs to each region and based on an allocation that re-
18 flects an equitable sharing of the costs among all end-
19 users. The Commission shall provide by rule for the review
20 of such costs and allocations, pursuant to the standards
21 in this subsection and subsection (d)(4)(F).

22 “(m) APPLICATION OF ANTITRUST LAWS.—

23 “(1) IN GENERAL.—To the extent undertaken
24 to develop, or implement, or enforce an organization
25 standard, each of the following activities shall not, in

1 any action under the antitrust laws, be deemed ille-
2 gal per se:

3 “(A) Activities undertaken by the electric
4 reliability organization under this section or af-
5 filiated regional reliability entity operating
6 under an agreement in effect under subsection
7 (h).

8 “(B) Activities of a member of the electric
9 reliability organization or affiliated regional re-
10 liability entity in pursuit of organization objec-
11 tives under this section undertaken in good
12 faith under the rules of the organization.

13 Primary jurisdiction, and immunities and other af-
14 firmative defenses, shall be available to the extent
15 otherwise applicable.

16 “(2) RULE OF REASON.—In any action under
17 the antitrust laws, an activity described in para-
18 graph (1) shall be judged on the basis of its reason-
19 ableness, taking into account all relevant factors af-
20 fecting competition and reliability.

21 “(3) DEFINITION.—For purposes of this sub-
22 section, the term ‘antitrust laws’ has the meaning
23 given such term in subsection (a) of the first section
24 of the Clayton Act (15 U.S.C. 12(a)), except that
25 such term includes section 5 of the Federal Trade

1 Commission Act (15 U.S.C. 45) to the extent that
2 such section 5 applies to unfair methods of competi-
3 tion.

4 “(n) SAVINGS CLAUSE.—Nothing in this section shall
5 be construed to preempt the authority of a State or a po-
6 litical subdivision of a State to ensure the reliability of
7 local distribution facilities within the State except where
8 the exercise of such authority unreasonably impairs the
9 reliability of the bulk power system.”.

10 **TITLE III—CONSUMER** 11 **PROTECTION**

12 **SEC. 301. ELECTRIC SUPPLIER INFORMATION DISCLOSURE.**

13 (a) DISCLOSURE RULES.—Not later than January 1,
14 2001, the Federal Trade Commission shall promulgate
15 rules prescribing the form, placement, content, and timing
16 of the disclosure required under subsections (b) and (c)
17 of this section. Such rules shall be promulgated in accord-
18 ance with section 553 of title 5 of the United States Code,
19 after consultation with the Federal Energy Regulatory
20 Commission, the Secretary of Energy, and the Adminis-
21 trator of the Environmental Protection Agency.

22 (b) DISCLOSURE TO RETAIL ELECTRIC CON-
23 SUMERS.—In order to assist retail electric consumers in
24 making informed purchasing decisions, any retail electric
25 supplier that sells or makes an offer to sell electric energy,

1 or solicits retail electric consumers to purchase electric en-
2 ergy, shall provide the retail electric consumers, in accord-
3 ance with rules promulgated under subsection (a), a state-
4 ment containing the following information:

5 (1)(A) The nature of the service being offered,
6 including information about interruptibility of serv-
7 ice.

8 (B) The price of electric energy, including a de-
9 scription of any variable charges.

10 (C) A description of all other charges that are
11 associated with the service being offered including,
12 but not limited to, access charges, exit charges,
13 back-up service charges, stranded cost recovery
14 charges, and customer service charges.

15 (D) Information concerning the product or
16 price that the Federal Trade Commission determines
17 is technologically and economically feasible to pro-
18 vide and is of assistance to retail electric consumers
19 in making purchasing decisions.

20 (2)(A) The share of electric energy that is gen-
21 erated by each type of energy generation resource.

22 (B) Information concerning generation emis-
23 sions characteristics that the Federal Trade Com-
24 mission determines is technologically and economi-

1 cally feasible to provide and is of assistance to retail
2 electric consumers in making purchasing decisions.

3 (c) DISCLOSURE TO WHOLESALE PURCHASERS.—In
4 every sale of electric energy for resale, the seller shall pro-
5 vide to the purchaser such information respecting genera-
6 tion source and emissions characteristics as may be re-
7 quired by rules under subsection (a).

8 (d) FEDERAL TRADE COMMISSION ENFORCE-
9 MENT.—Violation of a rule promulgated under this section
10 shall be treated as a violation of a rule under section 18
11 of the Federal Trade Commission Act (15 U.S.C. 57a).
12 All functions and powers of the Federal Trade Commis-
13 sion under such Act are available to the Federal Trade
14 Commission to enforce compliance with this section not-
15 withstanding any jurisdictional limitations in such Act.

16 (e) STATE AUTHORITY.—(1) This section does not
17 preclude a State or State commission from prescribing and
18 enforcing additional laws, regulations, or procedures re-
19 garding the practices which are the subject of this section,
20 so long as such laws, regulations, or procedures are not
21 inconsistent with the provisions of this section or with any
22 rule prescribed by the Federal Trade Commission pursu-
23 ant to it.

24 (2) The remedies provided by this section are in addi-
25 tion to any other remedies available by law.

1 **SEC. 302. CONSUMER PRIVACY.**

2 (a) PROHIBITION.—The Federal Trade Commission
3 shall promulgate rules prohibiting any person who obtains
4 consumer information in connection with the sale or deliv-
5 ery of electric energy to a retail electric consumer from
6 using, disclosing, or permitting access to such information
7 unless the consumer to whom such information relates
8 provides prior written approval. Such rules shall be pro-
9 mulgated in accordance with section 553 of title 5 of the
10 United States Code.

11 (b) PERMITTED USE.—The rules under subsection
12 (a) shall not prohibit any person from using, disclosing,
13 or permitting access to consumer information referred to
14 in subsection (a) for any of the following purposes:

15 (1) To initiate, render, bill, or collect for the
16 sale or delivery of electric energy to retail electric
17 consumers or for related services.

18 (2) To protect the rights or property of the per-
19 son obtaining such information.

20 (3) To protect retail electric consumers from
21 fraud, abuse, and unlawful subscription in the sale
22 or delivery of electric energy to such consumers.

23 (4) For law enforcement purposes.

24 (5) For purposes of compliance with any Fed-
25 eral, State, or local law or regulation authorizing

1 disclosure of information to a Federal, State, or
2 local agency.

3 (c) AGGREGATE CONSUMER INFORMATION.—The
4 rules under subsection (a) shall permit any person to use,
5 disclose, and permit access to aggregate consumer infor-
6 mation and shall require local distribution companies to
7 make such information available to retail electric suppliers
8 upon request and payment of a reasonable fee.

9 (d) FEDERAL TRADE COMMISSION ENFORCE-
10 MENT.—Violation of a rule promulgated under this section
11 shall be treated as a violation of a rule under section 18
12 of the Federal Trade Commission Act (15 U.S.C. 57a).
13 All functions and powers of the Federal Trade Commis-
14 sion under such Act are available to the Federal Trade
15 Commission to enforce compliance with this section not-
16 withstanding any jurisdictional limitations in such Act.

17 (e) STATE AUTHORITY.—(1) This section does not
18 preclude a State or State commission from prescribing and
19 enforcing additional laws, regulations, or procedures re-
20 garding the practices which are the subject of this section,
21 so long as such laws, regulations, or procedures are not
22 inconsistent with the provisions of this section or with any
23 rule prescribed by the Federal Trade Commission pursu-
24 ant to it.

1 (2) The remedies provided by this section are in addi-
2 tion to any other remedies available by law.

3 (f) DEFINITIONS.—As used in this section:

4 (1) AGGREGATE CONSUMER INFORMATION.—
5 The term “aggregate consumer information” means
6 collective data that relates to a group or category of
7 retail electric consumers, from which individual con-
8 sumer identities and characteristics have been re-
9 moved.

10 (2) CONSUMER INFORMATION.—The term “con-
11 sumer information” means information that relates
12 to the quantity, technical configuration, type, des-
13 tination, or amount of use of electric energy deliv-
14 ered to any retail electric consumer.

15 **SEC. 303. ELECTRIC SUPPLY UNFAIR TRADE PRACTICES.**

16 (a) SLAMMING.—(1) The Federal Trade Commission
17 shall promulgate rules in accordance with section 553 of
18 title 5 of the United States Code for the submittal and
19 verification of a retail electric consumer’s selection or
20 change in selection of a retail electric supplier and for the
21 assessment of penalties for violation of these rules.

22 (2) A person shall not submit or change the selection
23 made by a retail electric consumer except in accordance
24 with procedures established in paragraph (1).

1 (b) CRAMMING.—(1) The Federal Trade Commission
2 shall promulgate rules in accordance with section 553 of
3 title 5 of the United States Code for obtaining the consent
4 of a retail electric consumer for purchase of goods and
5 services other than those expressly authorized by law or
6 any agreement for the purchase of electric energy or re-
7 lated services entered into by the electric consumer and
8 for the assessment of penalties for violation of these rules.

9 (2) A person shall not charge a retail electric con-
10 sumer for a particular good or service except in accordance
11 with procedures established in paragraph (1).

12 (c) FEDERAL TRADE COMMISSION ENFORCEMENT.—
13 Violation of a rule promulgated under this section shall
14 be treated as a violation of a rule under section 18 of the
15 Federal Trade Commission Act (15 U.S.C. 57a). All func-
16 tions and powers of the Federal Trade Commission under
17 such Act are available to the Federal Trade Commission
18 to enforce compliance with this section notwithstanding
19 any jurisdictional limitations in such Act.

20 (d) STATE AUTHORITY.—(1) This section does not
21 preclude a State or State commission from prescribing and
22 enforcing additional laws, regulations, or procedures re-
23 garding the practices which are the subject of this section,
24 so long as such laws, regulations, or procedures are not
25 inconsistent with the provisions of this section or with any

1 rule prescribed by the Federal Trade Commission pursu-
2 ant to it.

3 (2) The remedies provided by this section are in addi-
4 tion to any other remedies available by law.

5 **SEC. 304. UNIVERSAL AND AFFORDABLE SERVICE.**

6 It is the sense of the Congress that—

7 (1) every retail electric consumer should have
8 access to electric energy at reasonable and afford-
9 able rates; and

10 (2) the States should ensure that retail electric
11 competition does not result in the loss of service to
12 rural, residential, or low-income consumers.

13 **SEC. 305. DEFINITIONS.**

14 For purposes of this title, each of the terms “local
15 distribution company”, “retail electric consumer”, “retail
16 electric supplier”, and “State commission” has the mean-
17 ing given such term in section 3 of the Federal Power Act.

18 **TITLE IV—MERGERS**

19 **SEC. 401. ELECTRIC COMPANY MERGERS AND DISPOSITION**
20 **OF PROPERTY.**

21 (a) IN GENERAL.—Section 203(a) of the Federal
22 Power Act (16 U.S.C. 824b(a)) is amended as follows:

23 (1) By striking “public utility” each place it ap-
24 pears and inserting “electric utility or transmitting
25 utility”.

1 (2) By striking “facilities subject to the juris-
2 diction of the Commission,” and inserting “genera-
3 tion or transmission facilities,”.

4 (3) By inserting the following after the first
5 sentence: “Except as the Commission otherwise pro-
6 vides, a holding company in a holding company sys-
7 tem that includes an electric utility company shall
8 not, directly or indirectly, purchase, acquire, or take
9 any security of an electric utility company or of a
10 holding company in a holding company system that
11 includes an electric utility company, without first se-
12 curing an order of the Commission authorizing it to
13 do so.”.

14 (4) By amending the last sentence to read as
15 follows: “After notice and a 60-day opportunity for
16 oral or written presentation of views, the Commis-
17 sion shall approve the proposed action if the Com-
18 mission finds that such action will be consistent with
19 the public interest. Such finding shall include consid-
20 eration of the effects on competition in wholesale
21 and retail markets. The Commission shall approve
22 or disapprove such action within 90 days after such
23 60-day period, except that the Commission may ex-
24 tend such 90-day period for an additional 90 days
25 for good cause.”.

(5) By adding at the end the following: “For purposes of this subsection, the terms ‘electric utility company’, ‘holding company’, and ‘holding company system’ have the meanings given those terms by section 512 of the Electricity Competition and Reliability Act. Notwithstanding sections 201(b)(1) and 201(f), generation and transmission facilities shall be subject to the jurisdiction of the Commission for purposes of this section.”.

(b) DEFINITION OF ELECTRIC UTILITY.—Section 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is amended by striking “, but does not include any” and inserting “and each”.

14 SEC. 402. ELIMINATION OF REVIEW BY THE NUCLEAR REG-
15 ULATORY COMMISSION.

Section 105 of the Atomic Energy Act of 1954 (42 U.S.C. 2135) is amended by adding the following after subsection c.:

“d. Following the date of enactment of this sub-
section, subsection 105 c. shall not apply to any pending
or future application filed for a license to construct or op-
erate a utilization or production facility under sections
103 or 104 b. This subsection shall not affect the Commis-
sion’s authority to enforce conditions included in licenses

1 issued under sections 103 or 104 b. before the date of
2 enactment of this subsection.”.

3 **TITLE V—PROMOTING**
4 **COMPETITION**
5 **Subtitle A—Retail Reciprocity**

6 **SEC. 501. RETAIL RECIPROCITY.**

7 (a) IN GENERAL.—Part II of the Federal Power Act
8 (16 U.S.C. 824 and following) is amended by adding at
9 the end the following section:

10 **“SEC. 218. RETAIL RECIPROCITY.**

11 “(a) IN GENERAL.—A retail electric supplier shall
12 not sell electric energy to any retail electric consumer
13 through local distribution facilities owned, controlled, or
14 operated by another entity unless all local distribution fa-
15 cilities owned, controlled, or operated by the retail electric
16 supplier, or any affiliate thereof, are subject to open ac-
17 cess. The preceding sentence shall not apply to any retail
18 electric supplier specifically exempted, by State law en-
19 acted prior to the date of enactment of this section, from
20 State reciprocity requirements. In the case of local dis-
21 tribution facilities that are owned, controlled, or operated
22 by a State regulated electric utility and that are not sub-
23 ject to open access, for purposes of this subsection such
24 local distribution facilities shall be deemed to be subject
25 to open access if the State regulated electric utility has

1 filed with the State commission a plan to provide, within
2 two years after the date of such filing, open access to such
3 facilities.

4 “(b) FOREIGN COMMERCE.—A retail electric supplier
5 located in a foreign country which is a party to the North
6 American Free Trade Agreement shall not sell electric en-
7 ergy to retail electric consumers in the United States
8 through local distribution facilities owned, controlled, or
9 operated by a local distribution company in the United
10 States unless all local distribution facilities owned, con-
11 trolled, or operated by the retail electric supplier, or any
12 affiliate thereof, and located in such country are subject
13 to open access.”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 subsection (a) shall take effect one year after the date of
16 the enactment of this Act.

17 **Subtitle B—Public Utility Holding**
18 **Company Act of 1935**

19 **SEC. 511. DEFINITIONS.**

20 For purposes of this subtitle:

21 (1) The term “affiliate” of a company means
22 any company 5 percent or more of the outstanding
23 voting securities of which are owned, controlled, or
24 held with power to vote, directly or indirectly, by
25 such company.

1 (2) The term “associate company” of a com-
2 pany means any company in the same holding com-
3 pany system with such company.

4 (3) The term “Commission” means the Federal
5 Energy Regulatory Commission.

6 (4) The term “company” means a corporation,
7 partnership, association, joint stock company, busi-
8 ness trust, or any organized group of persons,
9 whether incorporated or not, or a receiver, trustee,
10 or other liquidating agent of any of the foregoing.

11 (5) The term “electric utility company” means
12 any company that owns or operates facilities used
13 for the generation, transmission, or distribution of
14 electric energy for sale.

15 (6) The terms “exempt wholesale generator”
16 and “foreign utility company” have the same mean-
17 ings as in sections 32 and 33, respectively, of the
18 Public Utility Holding Company Act of 1935, as
19 those sections existed on the day before the effective
20 date of this subtitle.

21 (7) The term “gas utility company” means any
22 company that owns or operates facilities used for
23 distribution at retail (other than the distribution
24 only in enclosed portable containers or distribution
25 to tenants or employees of the company operating

1 such facilities for their own use and not for resale)
2 of natural or manufactured gas for heat, light, or
3 power.

4 (8) The term “holding company” means—

5 (A) any company that directly or indirectly
6 owns, controls, or holds, with power to vote, 10
7 percent or more of the outstanding voting secu-
8 rities of a public utility company or of a holding
9 company of any public utility company; and

10 (B) any person, determined by the Com-
11 mission, after notice and opportunity for hear-
12 ing, to exercise directly or indirectly (either
13 alone or pursuant to an arrangement or under-
14 standing with one or more persons) such a con-
15 trolling influence over the management or poli-
16 cies of any public utility company or holding
17 company as to make it necessary or appropriate
18 for the protection of utility customers with re-
19 spect to rates that such person be subject to the
20 obligations, duties, and liabilities imposed by
21 this subtitle upon holding companies.

22 (9) The term “holding company system” means
23 a holding company, together with its subsidiary com-
24 panies.

1 (10) The term “jurisdictional rates” means
2 rates established by the Commission for the trans-
3 mission of electric energy in interstate commerce,
4 the sale of electric energy at wholesale in interstate
5 commerce, the transportation of natural gas in inter-
6 state commerce, and the sale in interstate commerce
7 of natural gas for resale for ultimate public con-
8 sumption for domestic, commercial, industrial, or
9 any other use.

10 (11) The term “natural gas company” means a
11 person engaged in the transportation of natural gas
12 in interstate commerce or the sale of such gas in
13 interstate commerce for resale.

14 (12) The term “person” means an individual or
15 company.

16 (13) The term “public utility” means any per-
17 son who owns or operates facilities used for trans-
18 mission of electric energy in interstate commerce or
19 sales of electric energy at wholesale in interstate
20 commerce.

21 (14) The term “public utility company” means
22 an electric utility company or a gas utility company.

23 (15) The term “State commission” means any
24 commission, board, agency, or officer, by whatever
25 name designated, of a State, municipality, or other

1 political subdivision of a State that, under the laws
2 of such State, has jurisdiction to regulate public util-
3 ity companies.

4 (16) The term “subsidiary company” of a hold-
5 ing company means—

6 (A) any company, 10 percent or more of
7 the outstanding voting securities of which are
8 directly or indirectly owned, controlled, or held
9 with power to vote, by such holding company;
10 and

11 (B) any person, the management or poli-
12 cies of which the Commission, after notice and
13 opportunity for hearing, determines to be sub-
14 ject to a controlling influence, directly or indi-
15 rectly, by such holding company (either alone or
16 pursuant to an arrangement or understanding
17 with one or more other persons) so as to make
18 it necessary for the protection of utility cus-
19 tomers with respect to rates that such person
20 be subject to the obligations, duties, and liabil-
21 ities imposed by this subtitle upon subsidiary
22 companies of holding companies.

23 (17) The term “voting security” means any se-
24 curity presently entitling the owner or holder thereof

1 to vote in the direction or management of the affairs
2 of a company.

3 **SEC. 512. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
4 **PANY ACT OF 1935.**

5 The Public Utility Holding Company Act of 1935 (15
6 U.S.C. 79a and following) is repealed, effective 12 months
7 after the date of enactment of this Act.

8 **SEC. 513. FEDERAL ACCESS TO BOOKS AND RECORDS.**

9 (a) IN GENERAL.—Each holding company and each
10 associate company thereof shall maintain, and shall make
11 available to the Commission, such books, accounts, memo-
12 randa, and other records as the Commission determines
13 are necessary to identify costs incurred by a public utility
14 or natural gas company that is an associate company of
15 such holding company and necessary or appropriate for
16 the protection of utility customers with respect to jurisdic-
17 tional rates.

18 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
19 ing company or of any subsidiary company of a holding
20 company shall maintain, and make available to the Com-
21 mission, such books, accounts, memoranda, and other
22 records with respect to any transaction with another affil-
23 iate, as the Commission determines are necessary to iden-
24 tify costs incurred by a public utility or natural gas com-
25 pany that is an associate company of such holding com-

1 pany and necessary or appropriate for the protection of
2 utility customers with respect to jurisdictional rates.

3 (c) HOLDING COMPANY SYSTEMS.—The Commission
4 may examine the books, accounts, memoranda, and other
5 records of any company in a holding company system, or
6 any affiliate thereof, as the Commission determines are
7 necessary to identify costs incurred by a public utility or
8 natural gas company within such holding company system
9 and necessary or appropriate for the protection of utility
10 customers with respect to jurisdictional rates.

11 (d) CONFIDENTIALITY.—No member, officer, or em-
12 ployee of the Commission shall divulge any fact or infor-
13 mation that may come to his or her knowledge during the
14 course of examination of books, accounts, memoranda, or
15 other records as provided in this section, except as may
16 be directed by the Commission or by a court of competent
17 jurisdiction.

18 **SEC. 514. STATE ACCESS TO BOOKS AND RECORDS.**

19 (a) IN GENERAL.—Upon the written request of a
20 State commission having jurisdiction to regulate a public
21 utility company in a holding company system, and subject
22 to such terms and conditions as may be necessary and ap-
23 propriate to safeguard against unwarranted disclosure to
24 the public of any trade secrets or sensitive commercial in-
25 formation, a holding company or its associate company or

1 affiliate thereof, wherever located, shall produce for in-
2 spection books, accounts, memoranda, and other records
3 that—

4 (1) have been identified in reasonable detail in
5 a proceeding before the State commission;

6 (2) the State commission determines are nec-
7 essary to identify costs incurred by such public util-
8 ity company; and

9 (3) are necessary for the effective discharge of
10 the responsibilities of the State commission with re-
11 spect to such proceeding.

12 (b) EFFECT ON STATE LAW.—Nothing in this section
13 shall preempt applicable State law concerning the provi-
14 sion of books, accounts, memoranda, or other records, or
15 in any way limit the rights of any State to obtain books,
16 accounts, memoranda, or other records under Federal law,
17 contract, or otherwise.

18 (c) COURT JURISDICTION.—Any United States dis-
19 trict court located in the State in which the State commis-
20 sion referred to in subsection (a) is located shall have ju-
21 risdiction to enforce compliance with this section.

22 **SEC. 515. EXEMPTION AUTHORITY.**

23 (a) RULEMAKING.—Not later than 90 days after the
24 date of enactment of this Act, the Commission shall pro-
25 mulgate a final rule to exempt from the requirements of

1 section 514 any person that is a holding company, solely
2 with respect to one or more—

- 3 (1) qualifying facilities under the Public Utility
4 Regulatory Policies Act of 1978;
5 (2) exempt wholesale generators; or
6 (3) foreign utility companies.

7 (b) OTHER AUTHORITY.—If, upon application or
8 upon its own motion, the Commission finds that the books,
9 accounts, memoranda, and other records of any person are
10 not relevant to the jurisdictional rates of a public utility
11 company or natural gas company, or if the Commission
12 finds that any class of transactions is not relevant to the
13 jurisdictional rates of a public utility company, the Com-
14 mission shall exempt such person or transaction from the
15 requirements of section 514.

16 **SEC. 516. AFFILIATE TRANSACTIONS.**

17 Nothing in this subtitle shall preclude the Commis-
18 sion or a State commission from exercising its jurisdiction
19 under otherwise applicable law to determine whether a
20 public utility company, public utility, or natural gas com-
21 pany may recover in rates any costs of an activity per-
22 formed by an associate company, or any costs of goods
23 or services acquired by such public utility company from
24 an associate company.

1 **SEC. 517. APPLICABILITY.**

2 No provision of this subtitle shall apply to, or be
3 deemed to include—

4 (1) the United States;

5 (2) a State or any political subdivision of a
6 State;

7 (3) any foreign governmental authority not op-
8 erating in the United States;

9 (4) any agency, authority, or instrumentality of
10 any entity referred to in paragraph (1), (2), or (3);
11 or

12 (5) any officer, agent, or employee of any entity
13 referred to in paragraph (1), (2), or (3) acting as
14 such in the course of his or her official duty.

15 **SEC. 518. EFFECT ON OTHER REGULATIONS.**

16 Nothing in this subtitle precludes the Commission or
17 a State commission from exercising its jurisdiction under
18 otherwise applicable law to protect utility customers.

19 **SEC. 519. ENFORCEMENT.**

20 The Commission shall have the same powers as set
21 forth in sections 306 through 317 of the Federal Power
22 Act (16 U.S.C. 825e–825p) to enforce the provisions of
23 this subtitle.

24 **SEC. 520. SAVINGS PROVISIONS.**

25 (a) IN GENERAL.—Nothing in this subtitle prohibits
26 a person from engaging in or continuing to engage in ac-

1 tivities or transactions in which it is legally engaged or
2 authorized to engage on the date of enactment of this Act
3 , if that person continues to comply with the terms of any
4 such authorization, whether by rule or by order.

5 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
6 Nothing in this subtitle limits the authority of the Com-
7 mission under the Federal Power Act (16 U.S.C. 791a and
8 following) (including section 301 of that Act) or the Nat-
9 ural Gas Act (15 U.S.C. 717 and following) (including sec-
10 tion 8 of that Act).

11 **SEC. 521. IMPLEMENTATION.**

12 Not later than 12 months after the date of enactment
13 of this Act, the Commission shall—

14 (1) promulgate such regulations as may be nec-
15 essary or appropriate to implement this subtitle; and

16 (2) submit to the Congress detailed rec-
17 ommendations on technical and conforming amend-
18 ments to Federal law necessary to carry out this
19 subtitle and the amendments made by this subtitle.

20 **SEC. 522. TRANSFER OF RESOURCES.**

21 All books and records that relate primarily to the
22 functions transferred to the Commission under this sub-
23 title shall be transferred from the Securities and Exchange
24 Commission to the Commission.

1 **SEC. 523. EFFECTIVE DATE.**

2 This subtitle shall take effect 12 months after the
3 date of enactment of this Act.

4 **SEC. 524. CONFORMING AMENDMENT TO THE FEDERAL**
5 **POWER ACT.**

6 Section 318 of the Federal Power Act (16 U.S.C.
7 825q) is repealed.

8 **Subtitle C—Public Utility**
9 **Regulatory Policies Act of 1978**

10 **SEC. 531. PROSPECTIVE REPEAL.**

11 (a) NEW CONTRACTS.—After the date of enactment
12 of this Act, no electric utility shall be required to enter
13 into a new contract or obligation to purchase or to sell
14 electric energy or capacity pursuant to section 210 of the
15 Public Utility Regulatory Policies Act of 1978.

16 (b) EXISTING RIGHTS AND REMEDIES NOT AF-
17 FECTED.—Nothing in this section affects the rights or
18 remedies of any party with respect to the purchase or sale
19 of electric energy or capacity from or to a facility deter-
20 mined to be a qualifying small power production facility
21 or a qualifying cogeneration facility under section 210 of
22 the Public Utility Regulatory Policies Act of 1978 pursu-
23 ant to any contract or obligation to purchase or to sell
24 electric energy or capacity in effect on the date of the en-
25 actment of this Act, including the right to recover the
26 costs of purchasing such electric energy or capacity.

1 (c) INTERPRETATIONS AND ACTIONS TAKEN.—Noth-
2 ing in this subtitle may be deemed or construed as imply-
3 ing congressional ratification of any interpretation of, or
4 any action taken pursuant to, the Public Utility Regu-
5 latory Policies Act of 1978.

6 **SEC. 532. RECOVERY OF COSTS.**

7 In order to assure recovery by electric utilities pur-
8 chasing electric energy or capacity from a qualifying facil-
9 ity pursuant to any legally enforceable obligation entered
10 into or imposed pursuant to section 210 of the Public Util-
11 ity Regulatory Policies Act of 1978 prior to the date of
12 enactment of this Act of all costs associated with such pur-
13 chases, the Federal Energy Regulatory Commission shall
14 promulgate and enforce such regulations as may be re-
15 quired to assure that no utility shall be required directly
16 or indirectly to absorb the costs associated with such pur-
17 chases from a qualifying facility after the date of the en-
18 actment of this Act. Such regulations shall be treated as
19 a rule enforceable under the Federal Power Act (16
20 U.S.C. 791a–825r).

21 **SEC. 533. DEFINITIONS.**

22 For purposes of this subtitle:

23 (1) The term “electric utility” means any per-
24 son, State agency, or Federal agency, which sells
25 electric energy.

1 (2) The term “qualifying small power produc-
2 tion facility” has the same meaning as provided in
3 section 3(17)(C) of the Federal Power Act.

4 (3) The term “qualifying cogeneration facility”
5 has the same meaning as provided in section
6 3(18)(A) of the Federal Power Act.

7 (4) The term “qualifying facility” means either
8 a qualifying small power production facility or a
9 qualifying cogeneration facility.

10 **Subtitle D—Additional Provisions** 11 **Promoting Competition**

12 **SEC. 541. AGGREGATION.**

13 Part II of the Federal Power Act (16 U.S.C. 824 and
14 following) is amended by adding at the end the following
15 section:

16 **“SEC. 221. PURCHASE OF ELECTRIC ENERGY BY RETAIL** 17 **ELECTRIC CONSUMERS.**

18 “Notwithstanding any other provision of Federal or
19 State law, and subject to not unduly discriminatory or
20 preferential State requirements imposed on retail electric
21 suppliers, a group of retail electric consumers or any enti-
22 ty that aggregates consumers acting on behalf of such
23 group, including a political subdivision of a State or a
24 rural electric cooperative, may acquire retail electric en-
25 ergy on an aggregate basis if the group is served by one

1 or more local distribution companies all of whose local dis-
2 tribution facilities are subject to open access.”.

3 **SEC. 542. INTERCONNECTION.**

4 (a) DISTRIBUTED GENERATION FACILITIES.—Sec-
5 tion 210 of the Federal Power Act is amended by adding
6 the following at the end thereof:

7 “(f) SPECIAL RULE FOR DISTRIBUTED GENERATION
8 FACILITIES.—

9 “(1) DEFINITION.—As used in this subsection
10 the term ‘distributed generation facility’ means an
11 electric power generation facility of not more than
12 50 megawatts capacity that is designed to serve re-
13 tail electric consumers at the facility.

14 “(2) INTERCONNECTION.—A local distribution
15 company shall allow a distributed generation facility
16 to interconnect with the local distribution facilities of
17 such company if the distributed generation facility
18 owner is a retail electric consumer provided local dis-
19 tribution service by such company and such owner
20 complies with the final rule promulgated under para-
21 graph (3).

22 “(3) RULES.—Within one year from the date of
23 enactment of this subsection, the Commission shall
24 promulgate a final rule to establish safety, reli-
25 ability, and power quality standards relating to dis-

1 tributed generation facilities. To the extent feasible,
2 the Commission shall develop the standards through
3 a process involving interested parties. For purposes
4 of developing such standards, the Commission shall
5 establish an advisory committee composed of quali-
6 fied experts to make recommendations to the Com-
7 mission”.

8 (b) INTERCONNECTION OF OTHER FACILITIES.—

9 Section 210 of the Federal Power Act is amended as fol-
10 lows:

11 (1) In subsection (a)(1) (16 U.S.C.
12 824i(a)(1))—

13 (A) by inserting “transmitting utility, local
14 distribution companies” after “electric utility,”;

15 (B) by inserting “any transmitting utility,”
16 after “small power production facility,” in sub-
17 paragraph (A); and

18 (C) by inserting “or distribution” after
19 “transmission” in subparagraph (D).

20 (2) In subsection (b)(2) (16 U.S.C. 824i(b)(2))
21 by striking “an evidentiary hearing” and inserting
22 “a hearing”.

23 (3) In subsection (c)(2) strike “or” at the end
24 of subparagraph (B), strike “and” the end of sub-

1 paragraph (C) and insert “or”, and add the fol-
2 lowing at the end thereof:

3 “(D) promote competition in electricity
4 markets, and”.

5 (4) In subsection (d) by deleting the last sen-
6 tence.

7 **TITLE VI—FEDERAL ELECTRIC**
8 **UTILITIES**

9 **Subtitle A—Tennessee Valley**
10 **Authority**

11 **SEC. 601. DEFINITIONS.**

12 For purposes of this subtitle:

13 (1) The term “Commission” means the Federal
14 Energy Regulatory Commission.

15 (2) The term “distributor” means a municipal
16 or cooperative organization that owns, controls, or
17 operates local distribution facilities and which on
18 January 2, 1998, purchased electric power at whole-
19 sale from the Tennessee Valley Authority under an
20 all-requirements contract.

21 (3) The term “distributor service area” means
22 the geographic area within which a distributor is au-
23 thorized by State law to sell electric power to retail
24 electric consumers on the date of enactment of this
25 Act.

1 (4) The term “electric utility” has the same
2 meaning as provided by section 3(22) of the Federal
3 Power Act (16 U.S.C. 796(22)).

4 (5) The term “excess electric power” means
5 that portion of the electric power and capacity that
6 is available to the Tennessee Valley Authority and
7 which exceeds the Tennessee Valley Authority’s firm
8 power supply obligations under contracts entered
9 into in accordance with sections 10, 11, and 12 of
10 the Tennessee Valley Authority Act of 1933 (16
11 U.S.C. 831i, 831j, and 831k).

12 (6) The term “public utility” has the same
13 meaning as provided by section 201(e)(1) of the
14 Federal Power Act (16 U.S.C. 824(e)(1)).

15 (7) The term “retail electric consumer” has the
16 same meaning as provided by section 3 of the Fed-
17 eral Power Act (16 U.S.C. 796).

18 (8) The term “Tennessee Valley Region” means
19 the geographic area in which the Tennessee Valley
20 Authority or its distributors were the primary source
21 of electric power on the date of enactment of this
22 Act.

23 **SEC. 602. WHOLESALE COMPETITION IN THE TENNESSEE**
24 **VALLEY REGION.**

25 (a) AMENDMENTS TO THE FEDERAL POWER ACT.—

1 (1) Section 212(f) of the Federal Power Act
2 (16 U.S.C. 824k(f)), relating to interconnection or
3 wheeling orders that result in the sale or delivery of
4 electric power outside the Tennessee Valley Region,
5 is repealed.

6 (2) Section 212(j) of the Federal Power Act
7 (16 U.S.C. 824k(j)), relating to transmission within
8 the Tennessee Valley Region, is repealed.

9 (b) AMENDMENTS TO THE TENNESSEE VALLEY AU-
10 THORITY ACT.—(1) The third sentence of the first para-
11 graph of section 15d(a) of the Tennessee Valley Authority
12 Act of 1933 (16 U.S.C. 831n–4(a)), limiting the sale or
13 delivery of electric power outside the area for which the
14 Tennessee Valley Authority or its distributors were the
15 primary source of electric power on July 1, 1957, is re-
16 pealed.

17 (2) The second and third paragraphs of section
18 15d(a) of the Tennessee Valley Authority Act of 1933 (16
19 U.S.C. 831n–4(a)) are repealed.

20 **SEC. 603. TENNESSEE VALLEY AUTHORITY POWER SALES.**

21 (a) LIMIT ON RETAIL SALES BY TENNESSEE VALLEY
22 AUTHORITY.—Notwithstanding sections 10, 11, and 12 of
23 the Tennessee Valley Authority Act (16 U.S.C. 831i), the
24 Tennessee Valley Authority shall not sell electric power at
25 retail, except it may sell power to—

1 (1) a retail electric consumer (or predecessor in
2 interest) that had a contract for the purchase of
3 electric power from the Tennessee Valley Authority
4 on the date of enactment of this Act; or

5 (2) a retail electric consumer who consumes
6 that power within a distributor service area, if—

7 (A) the distributor's firm power purchases
8 from the Tennessee Valley Authority are 50
9 percent or less of the distributor's total retail
10 sales; or

11 (B) the distributor agrees that the Ten-
12 nessee Valley Authority can sell electric power
13 to such retail electric consumer.

14 (b) REGIONAL PREFERENCE FOR WHOLESALE
15 POWER SALES.—

16 (1) REGIONAL PREFERENCE.—Notwithstanding
17 sections 10, 11, and 12, or any other provision of
18 the Tennessee Valley Authority Act of 1933 (16
19 U.S.C. 831 and following), the sale of electric power
20 at wholesale by the Tennessee Valley Authority for
21 use outside the Tennessee Valley Region shall be
22 limited to excess electric power.

23 (2) SALES OF EXCESS ELECTRIC POWER.—The
24 Tennessee Valley Authority shall not offer firm ex-
25 cess power under an agreement with a term of three

1 years or longer to a new wholesale customer at
2 rates, terms, and conditions more favorable than
3 those offered to any distributor for comparable
4 power, taking into account such factors as the
5 amount of power sold, the firmness of such power,
6 and the length of the contract term unless the dis-
7 tributor or distributors that are purchasing power
8 under equivalent firm power contracts agree to the
9 sale to the new customer.

10 Nothing in this subsection shall prevent the Tennessee
11 Valley Authority from making exchange power arrange-
12 ments with other electric utilities when economically fea-
13 sible.

14 (c) REGULATION OF TVA WHOLESALE POWER
15 SALES.—Notwithstanding section 201(f) of the Federal
16 Power Act, sections 202(h), 205, 206, 208, and 210
17 through 213 and sections 301 through 304, 306, 307 (ex-
18 cept the last sentence of paragraph (c)), 308, 309, 313,
19 and 317 of the Federal Power Act apply to sales of electric
20 power at wholesale by the Tennessee Valley Authority for
21 use outside the Tennessee Valley Region to the same ex-
22 tent and in the same manner as such provisions apply to
23 wholesale sales of electric power in interstate commerce
24 by a public utility otherwise subject to the jurisdiction of
25 the Commission under part II of such Act.

1 (d) APPLICATION OF TENNESSEE VALLEY AUTHOR-
2 ITY ACT TO SALES OUTSIDE TENNESSEE VALLEY RE-
3 GION.—The third proviso of section 10 of the Tennessee
4 Valley Authority Act of 1933 (16 U.S.C. 831i) and the
5 second and third provisos of section 12 of the Tennessee
6 Valley Authority Act of 1933 (16 U.S.C. 831k) shall not
7 apply to any sale of excess electric power by the Tennessee
8 Valley Authority for use outside the Tennessee Valley Re-
9 gion.

10 **SEC. 604. TENNESSEE VALLEY AUTHORITY ELECTRIC GEN-**
11 **ERATION FACILITIES.**

12 Section 15(d) of the Tennessee Valley Authority Act
13 of 1933 (16 U.S.C. 831n–4(a)) is amended by striking
14 the period at the end of the second sentence and inserting
15 the following: “, if the Corporation determines the con-
16 struction, acquisition, enlargement, improvement, or re-
17 placement of any plant or facility used or to be used for
18 the generation of electric power that is necessary to supply
19 the demands of distributors (as defined in section 601 of
20 the Electricity Competition and Reliability Act) and retail
21 electric consumers (as defined in such section 601) of the
22 Corporation.”.

1 **SEC. 605. RENEGOTIATION OF ALL-REQUIREMENTS POWER**
2 **CONTRACTS.**

3 (a) RENEGOTIATION.—Within one year following the
4 date of enactment of this Act, the Tennessee Valley Au-
5 thority and the distributors shall renegotiate their existing
6 all-requirements power contracts with respect to—

7 (1) the remaining term;

8 (2) the length of the termination notice;

9 (3) the amount of electric power a distributor
10 may purchase from an electric utility other than the
11 Tennessee Valley Authority, and access to the Ten-
12 nessee Valley Authority transmission system for that
13 electric power; and

14 (4) stranded cost recovery.

15 (b) RESOLUTION.—If the parties are unable to reach
16 agreement with regard to any of the issues under sub-
17 section (a) within the one-year period set forth in sub-
18 section (a), the distributor shall have the right to termi-
19 nate the contract upon not less than three years notice.

20 **SEC. 606. REGULATION OF TENNESSEE VALLEY AUTHORITY**
21 **TRANSMISSION SYSTEM.**

22 (a) FEDERAL POWER ACT JURISDICTION.—Notwith-
23 standing sections 201(b)(1) and 201(f) of the Federal
24 Power Act, sections 202(h), 205, 206, 208, and 210
25 through 213 and sections 301 through 304, 306, 307 (ex-
26 cept the last sentence of paragraph (c)), 308, 309, 313,

1 and 317 of the Federal Power Act apply to the trans-
2 mission and local distribution of electric power by the Ten-
3 nessee Valley Authority to the same extent and in the
4 same manner as such provisions apply to the transmission
5 of electric power in interstate commerce by a public utility
6 otherwise subject to the jurisdiction of the Commission
7 under part II of such Act.

8 (b) RATE PHASE-IN.—If the Commission determines
9 that the initial application of this subtitle in the develop-
10 ment of any Tennessee Valley Authority rates for trans-
11 mission services would result in an excessive increase in
12 any rate, as determined by the Commission, the Commis-
13 sion may phase in the effect of the application of this sub-
14 title to such rate over a reasonable period of time.

15 **SEC. 607. REGULATION OF TENNESSEE VALLEY AUTHORITY**
16 **DISTRIBUTORS.**

17 (a) REPEAL OF TENNESSEE VALLEY AUTHORITY
18 REGULATION OF DISTRIBUTORS.—Upon the election of a
19 distributor, the third proviso of section 10 of the Ten-
20 nessee Valley Authority Act of 1933 (16 U.S.C. 831i) and
21 the second and third provisos of section 12 of the Ten-
22 nessee Valley Authority Act of 1933 (16 U.S.C. 831k)
23 shall not apply to future wholesale sales of electric power
24 by the Tennessee Valley Authority in the Tennessee Valley
25 Region, and the Tennessee Valley Authority shall not be

1 authorized to regulate, by means of rules, contract provi-
2 sions, resale rate schedules, contract termination rights,
3 or any other method, any rates, terms, or conditions im-
4 posed on the resale of such electric power by such dis-
5 tributor, or any rates, terms, or conditions for the use of
6 local distribution facilities. In any contract between the
7 Tennessee Valley Authority and a distributor for the pur-
8 chase of at least 70 percent of the distributor's require-
9 ments for the sale of electric power, the Tennessee Valley
10 Authority shall include such terms and conditions as may
11 be reasonably necessary to assure that the financial bene-
12 fits of a distributor's electric system operations are allo-
13 cated to the distributor's ratepayers.

14 (b) REMOVAL OF PURPA RATEMAKING AUTHOR-
15 ITY.—Section 3(17) of the Public Utility Regulatory Poli-
16 cies Act of 1978 (16 U.S.C. 2602(17)) is amended by
17 striking “, and in the case of an electric utility with re-
18 spect to which the Tennessee Valley Authority has rate-
19 making authority, such term means the Tennessee Valley
20 Authority”.

21 (c) AUTHORITY OF GOVERNING BODIES OF DIS-
22 TRIBUTORS.—Any regulatory authority exercised by the
23 Tennessee Valley Authority over any distributor shall be
24 exercised by the governing body of such distributor, in ac-

1 cordance with the laws of the State in which it is orga-
2 nized.

3 **SEC. 608. STRANDED COST RECOVERY.**

4 (a) IN GENERAL.—Within six months after the date
5 of enactment of this Act, or sooner as part of any distribu-
6 tors renegotiation of its contract under section 605, the
7 Tennessee Valley Authority shall make a good faith effort
8 to reach agreement with distributors for recovery of its
9 stranded costs. The Tennessee Valley Authority and the
10 distributors shall submit jointly, or if they disagree, sub-
11 mit separately, a stranded cost recovery plan to the Com-
12 mission for review. The Commission shall approve, reject,
13 or modify the plan and issue an order within one year of
14 the date of enactment of this Act, to provide for recovery
15 of stranded costs (as determined by the Commission) by
16 the Tennessee Valley Authority from any departing power
17 or transmission customer. These regulations shall provide
18 that customers that did not cause stranded costs to be
19 incurred by the Tennessee Valley Authority are not obli-
20 gated to pay such costs on behalf of other customers. The
21 Tennessee Valley Authority is authorized to recover such
22 of its stranded costs as are approved by the Commission.
23 The Commission may not impose a stranded cost recovery
24 charge after September 30, 2007, unless the person
25 against whom such charges are assessed agrees otherwise.

1 (b) DEBT.—Amounts recovered by the Tennessee
2 Valley Authority as stranded cost recovery charges shall
3 be used to pay down Tennessee Valley Authority's debt
4 to the extent determined by the Tennessee Valley Author-
5 ity Board to be consistent with the proper financial man-
6 agement of the Tennessee Valley Authority power system,
7 provided that Tennessee Valley Authority may not use
8 amounts recovered to pay for additions to the Tennessee
9 Valley Authority's generating capacity.

10 (c) UNBUNDLING.—Any stranded cost recovery
11 charges assessed by the Tennessee Valley Authority on re-
12 tail or wholesale customers or assessed on retail customers
13 of distributors shall be unbundled from the otherwise ap-
14 plicable retail or wholesale rate applicable to that customer
15 and stated on the customer's bill as a separate charge.

16 (d) REPORT.—Beginning in fiscal year 2003, as part
17 of the annual management report submitted by the Ten-
18 nessee Valley Authority to Congress, the Tennessee Valley
19 Authority shall also specifically report:

20 (A) the status of the Tennessee Valley
21 Authority's long-range financial plans and the
22 progress toward its goal of competitively priced
23 power, and a general discussion of Tennessee Valley
24 Authority's prospects on meeting the objectives of

1 the Ten Year Business Outlook issued on July 22,
2 1997;

3 (B) any changes in assumptions since the pre-
4 vious report that may have a material effect on Ten-
5 nessee Valley Authority's long-range financial plans;

6 (C) the source of funds used for any capacity
7 additions;

8 (D) the use or other disposition of amounts re-
9 covered by Tennessee Valley Authority under this
10 Act;

11 (E) the amount by which Tennessee Valley
12 Authority's publicly-held debt was reduced; and

13 (F) the projected amount by which Tennessee
14 Valley Authority's publicly-held debt will be reduced.

15 **SEC. 609. APPLICATION OF ANTITRUST LAW.**

16 (a) IN GENERAL.—The Tennessee Valley Authority
17 shall be subject to the antitrust laws of the United States
18 with respect to the operation of its electric power and
19 transmission systems. For purposes of this section, the
20 term “antitrust laws” has the meaning given such term
21 in subsection (a) of the first section of the Clayton Act
22 (15 U.S.C. 12(a)), except that such term includes section
23 5 of the Federal Trade Commission Act (15 U.S.C. 45)
24 to the extent that such section 5 applies to unfair methods
25 of competition.

1 (b) DAMAGES.—No damages, interest on damages,
2 costs, or attorney’s fees may be recovered under section
3 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
4 15c) from the Tennessee Valley Authority.

5 **SEC. 610. SAVINGS PROVISION.**

6 (a) IN GENERAL.—This subtitle shall be interpreted
7 and implemented in a manner that does not adversely af-
8 fect bonds issued by the Tennessee Valley Authority.

9 (b) TENNESSEE VALLEY AUTHORITY BONDS NOT
10 OBLIGATIONS OF THE UNITED STATES.—Nothing in this
11 subtitle shall affect section 15d(b) of the Tennessee Valley
12 Authority Act of 1933 (16 U.S.C. 831n–4(b)), providing
13 that bonds issued by the Tennessee Valley Authority shall
14 not be obligations of, nor shall payment of the principal
15 thereof or interest thereon be guaranteed by, the United
16 States.

17 **Subtitle B—Bonneville Power**
18 **Administration**

19 **SEC. 621. DEFINITIONS.**

20 As used in this subtitle:

21 (1) The term ‘Bonneville Administrator’ means
22 the Administrator of the Bonneville Power Adminis-
23 tration.

24 (2) The term ‘Bonneville Transmission System’
25 means transmission facilities owned or leased by the

1 United States and operated by the Bonneville Power
2 Administration or by another entity under section
3 202(h) of the Federal Power Act.

4 (3) The terms “Commission”, “electric utility”,
5 “retail electric consumer”, and “transmitting util-
6 ity” have the same meanings as provided by section
7 3 of the Federal Power Act (16 U.S.C. 796).

8 (4) The term “major resource” has the mean-
9 ing given such term in section 3(12) of the Pacific
10 Northwest Electric Power Planning and Conserva-
11 tion Act.

12 (5) The term ‘Pacific Northwest’ has the mean-
13 ing given that term in section 3(14) of the Pacific
14 Northwest Electric Power Planning and Conserva-
15 tion Act (16 U.S.C. 839a(14)).

16 **SEC. 622. REGULATION OF BONNEVILLE TRANSMISSION**
17 **SYSTEM.**

18 (a) IN GENERAL.—After September 30, 2001, not-
19 withstanding section 201(f) of the Federal Power Act, sec-
20 tions 202(h), 205, 206, 208, and 210 through 213 and
21 sections 301 through 304, 306, 307 (except the last sen-
22 tence of paragraph (c)), 308, 309, 313, and 317 of the
23 Federal Power Act apply to the Bonneville Transmission
24 System and transmission of electric energy and provision

1 of necessary associated services over the Bonneville Trans-
2 mission System.

3 (b) ADDITIONAL RULES.—Any determination by the
4 Commission of rates, terms, and conditions for the trans-
5 mission of electric energy under subsection (a) shall be
6 subject to the following rules:

7 (1) Phasing in changes in transmission rates or
8 charges that would cause unreasonable cost shifts
9 among users of the Bonneville Transmission System
10 if implemented at once.

11 (2) Mitigating unreasonable adverse effects on
12 transmission customers in the Pacific Northwest
13 that would otherwise result from changes in the
14 treatment of costs to acquire transmission to serve
15 customers historically served by General Transfer
16 Agreements entered into between the Bonneville Ad-
17 ministrator and other transmitting utilities prior to
18 the enactment of this Act. This paragraph shall not
19 apply if the Bonneville Transmission System is oper-
20 ated by a regional transmission organization ap-
21 proved by the Commission.

22 (3) No direct assignment of costs of trans-
23 mission facilities that were included in the Bonne-
24 ville Administrator's transmission rates in effect on

1 October 1, 1998, or costs for replacement of such fa-
2 cilities.

3 (4) Assuring the Bonneville Power Administra-
4 tion's transmission rates and charges are established
5 sufficient to—

6 (A) recover Federal investment in the Bon-
7 neville Transmission System over a reasonable
8 period of years after first meeting all the Bon-
9 neville Power Administration's other trans-
10 mission costs and expenses; and

11 (B) produce the revenues necessary to as-
12 sure timely payment of all transmission related
13 costs and expenses;

14 provided that this paragraph shall not be construed
15 to require any particular methodology for setting
16 transmission rates.

17 (5) Rules established by the Commission to—

18 (A) assure transmission access is provided
19 over the Bonneville Transmission System for
20 hydroelectric power that must be generated and
21 transmitted at a particular time in order to re-
22 duce levels of dissolved nitrogen gas harmful to
23 fish, with such access to be provided in a man-
24 ner that displaces other generation using the
25 Bonneville Transmission System but does not

1 impair service to loads, require operations that
2 may damage generation facilities, or alter com-
3 mercial relationships between the electric utility
4 whose generation was displaced and its cus-
5 tomer; and

6 (B) provide methods for compensation be-
7 tween or among the electric utility that gen-
8 erated the hydroelectric power and the party or
9 parties affected by the displacement of trans-
10 mission customers in those circumstances.

11 (6) Section 623 of this Act (relating to sur-
12 charge on transmission rates to recover otherwise
13 nonrecoverable costs).

14 (c) APPLICABILITY.—Subsection (a) shall not apply
15 to—

16 (1) the Bonneville Power Administration's ac-
17 tivities other than transmission of electric energy
18 and provision of necessary associated services over
19 the Bonneville Transmission System; or

20 (2) a contract in effect on the date of enact-
21 ment of this Act, except for rates which are adjust-
22 able by the Bonneville Administrator under the con-
23 tract; a treaty of the United States; or a contract
24 concerning the delivery of electric energy and capac-

1 ity entered into by entities designated pursuant to
2 such a treaty.

3 (d) PRIORITY OF PAYMENTS.—Nothing in this sec-
4 tion shall alter or be construed to alter the priority of pay-
5 ments established in section 13(b) of the Federal Colum-
6 bia River Transmission System Act (16 U.S.C. 838k(b))
7 or the requirements of section 11 of that Act (16 U.S.C.
8 838i).

9 (e) COSTS AND REVENUES.—Costs and revenues
10 shall be allocated to the Bonneville Transmission System
11 in accordance with rules to be promulgated by the Com-
12 mission.

13 (f) HEARINGS.—In any proceeding, or part of a pro-
14 ceeding, that the Commission sets for hearing before an
15 administrative law judge, with respect to the rates, terms,
16 or conditions for transmission of electric energy by the
17 Bonneville Power Administration, all evidentiary hearings
18 shall be conducted in the Pacific Northwest.

19 **SEC. 623. SURCHARGE ON TRANSMISSION RATES TO RE-**
20 **COVER OTHERWISE NONRECOVERABLE**
21 **COSTS.**

22 (a) SURCHARGE AUTHORITY.—By October 1, 2001,
23 notwithstanding section 201(f) of the Federal Power Act,
24 the Bonneville Administrator shall propose and the Com-
25 mission shall, by accepting or modifying the Bonneville

1 Administrator's proposal, authorize the Administrator to
2 place a surcharge on rates or charges for transmission
3 services over the Bonneville Transmission System when
4 necessary to recover power costs that cannot be recovered
5 through power revenues to meet the cost recovery require-
6 ments of section 7(a)(1) of the Pacific Northwest Electric
7 Power Planning and Conservation Act (16 U.S.C.
8 839e(a)(1)).

9 (b) REQUIREMENTS.—The transmission surcharge
10 referred to in subsection (a) shall—

11 (1) recover not more than \$600,000,000 in
12 total and no more than \$100,000,000 in any fiscal
13 year;

14 (2) be available only between October 1, 2001,
15 and October 1, 2016;

16 (3) be implemented by the Bonneville Adminis-
17 trator only when the Administrator projects that
18 available financial reserves in the Bonneville Power
19 Administration Fund attributable to the power func-
20 tion will fall below \$150,000,000;

21 (4) not be implemented until the Bonneville Ad-
22 ministrator has undertaken reasonable and prudent
23 measures to mitigate the need to implement the sur-
24 charge; and

1 (5) to the fullest extent possible, be designed
2 and established to recover the costs from trans-
3 mission in a manner that does not apply to use of
4 the Bonneville Transmission System for sales of
5 electric energy outside the Pacific Northwest.

6 (c) IMPLEMENTATION.—The Bonneville Adminis-
7 trator shall have sole discretion to implement the sur-
8 charge on rates or charges for transmission services au-
9 thorized by the Commission under subsection (a). Before
10 implementing the surcharge, the Bonneville Administrator
11 shall—

12 (1) make available information concerning the
13 need for and amount of the surcharge, and its pro-
14 posed effective date;

15 (2) conduct a public process of not less than 30
16 days in the Pacific Northwest to receive comments
17 on implementation of the surcharge; and

18 (3) afford the Pacific Northwest Electric Power
19 and Conservation Planning Council 30 days to make
20 recommendations to the Bonneville Administrator
21 concerning cost management options that could miti-
22 gate the need to implement the surcharge.

23 If, after taking into consideration those comments and
24 recommendations and ensuring that reasonable and pru-
25 dent alternatives to implementation of the surcharge have

1 been undertaken, the Bonneville Administrator decides to
2 implement a surcharge, the Administrator may implement
3 the surcharge by filing the proposed surcharge with the
4 Commission. The surcharge shall take effect on the Bon-
5 neville Administrator's proposed effective date, but no ear-
6 lier than 60 days following the Administrator's filing of
7 the proposed surcharge to the Commission for approval.

8 (d) COMMISSION REVIEW.—Within 120 days after
9 the effective date of the surcharge, the Commission shall
10 accept, reject, or modify the surcharge and communicate
11 its decision to the Bonneville Administrator. If the Com-
12 mission rejects or modifies the surcharge, the Commission
13 may order the Bonneville Power Administration to refund,
14 with interest, the portion of the surcharge the Commission
15 found not justified or the Commission may authorize the
16 Bonneville Power Administration to recover amounts from
17 customers who underpaid or did not pay the surcharge.
18 If the Commission orders modification of the surcharge,
19 such modified charge shall be effective on the date and
20 for the time period specified by the Commission.

21 (e) REPAYMENT.—Any amounts recovered through
22 the transmission surcharge shall be treated as loans to the
23 Bonneville Power Administration's power function by the
24 transmission function. The Bonneville Power Administra-
25 tion shall repay the loans as soon as possible from power

1 revenues once the Bonneville Power Administration is able
2 to meet other power cost recovery and Treasury repay-
3 ment obligations on an annual basis using power revenues.
4 To the extent practicable, the Administrator shall refund
5 all or a portion of the surcharge collected from trans-
6 mission customers, as directed and determined appro-
7 priate by the Commission. The borrowed revenues shall
8 bear interest at a rate determined appropriate by the
9 Commission.

10 (f) COST RECOVERY.—For the recovery of costs re-
11 lating to any generation or conservation resources fi-
12 nanced by debt issued by a non-Federal party before Octo-
13 ber 1, 1998 (and any refundings and refinancing thereof),
14 and secured by an obligation of the Bonneville Power Ad-
15 ministration to make payments or net bill power and
16 transmission service that cannot be recovered through
17 power rates and charges and paid in accordance with the
18 application of revenues and priority of payments specified
19 by section 13(b) of the Federal Columbia River Trans-
20 mission System Act of 1974 (16 U.S.C. 838k(b)), the pro-
21 visions of this section apply, except for the recovery limita-
22 tions under subsection (b)(1) and the time limits under
23 subsection (b)(2), but only to the extent such recovery
24 would have been allowed under laws applicable to the Bon-
25 neville Power Administration as of October 1, 1998.

1 **SEC. 624. LIMIT ON RETAIL SALES BY BONNEVILLE POWER**
2 **ADMINISTRATION.**

3 Notwithstanding section 5(a) of the Bonneville
4 Project Act (16 U.S.C. 832d(a)), the Bonneville Power
5 Administration shall not sell electric energy or capacity to
6 any retail electric consumer that did not have a contract
7 for the purchase of electric energy from the Bonneville
8 Power Administration for use at specific facilities on Octo-
9 ber 1, 1998.

10 **SEC. 625. ACQUISITION OF NEW MAJOR GENERATING RE-**
11 **SOURCES.**

12 Section 6 of the Pacific Northwest Electric Power
13 Planning and Conservation Act (16 U.S.C. 839d) is
14 amended by adding the following new subsection at the
15 end thereof:

16 “(n) ACQUISITION OF NEW MAJOR GENERATING RE-
17 SOURCES.—Notwithstanding any other provision of law,
18 the Administrator shall not acquire any new major re-
19 source after the date of enactment of this subsection un-
20 less the Commission determines that satisfactory contrac-
21 tual and other financial arrangements have been made to
22 ensure that the customer or customers on whose behalf
23 the resource is acquired commit to pay the full cost of
24 the resource and the Administrator shall not acquire any
25 new major resource that the Administrator reasonably ex-
26 pects may require implementation of the surcharge au-

1 thorized by section 623 of the Electricity Competition and
2 Reliability Act.”.

3 **SEC. 626. APPLICATION OF ANTITRUST LAW.**

4 (a) IN GENERAL.—The Bonneville Power Adminis-
5 tration shall be subject to the antitrust laws of the United
6 States with respect to its sale of electric energy and capac-
7 ity and the operation of its transmission system. For pur-
8 poses of this section, the term “antitrust laws” has the
9 meaning given such term in subsection (a) of the first sec-
10 tion of the Clayton Act (15 U.S.C. 12(a)), except that
11 such term includes section 5 of the Federal Trade Com-
12 mission Act (15 U.S.C. 45) to the extent that such section
13 5 applies to unfair methods of competition.

14 (b) DAMAGES.—No damages, interest on damages,
15 costs, or attorney’s fees may be recovered under section
16 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
17 15c) from the Bonneville Power Administration.

18 **SEC. 627. CONFORMING AMENDMENTS.**

19 (a) FEDERAL POWER ACT.—Section 212(i) of the
20 Federal Power Act (16 U.S.C. 824(i)) is repealed.

21 (b) FEDERAL COLUMBIA RIVER TRANSMISSION SYS-
22 TEM ACT.—(1) Section 3(c) of the Federal Columbia
23 River Transmission System Act (16 U.S.C. 838a(o)) is
24 amended by inserting “, and transmission facilities with
25 an estimated capital cost exceeding \$30,000,000 in 1998

1 dollars, adjusted using the United States Gross Domestic
2 Product Implicit Price Deflator Index”, after “own facili-
3 ties”.

4 (2) Section 6 of the Federal Columbia River Trans-
5 mission System Act (16 U.S.C. 838d) is repealed.

6 (3) Section 9 of the Federal Columbia River Trans-
7 mission System Act (16 U.S.C. 838g) is amended to read
8 as follows:

9 **“SEC. 9. RATES AND CHARGES.**

10 “Schedules of rates and charges for the sale, includ-
11 ing dispositions to Federal agencies, of all electric power
12 made available to the Administrator pursuant to section
13 8 of this Act or otherwise acquired shall be established—

14 “(1) with a view to encouraging the widest pos-
15 sible diversified use of electric power at the lowest
16 possible rates to consumers consistent with sound
17 business principles;

18 “(2) having regard to the recovery (upon the
19 basis of the application of such rate schedules to the
20 capacity of the electric facilities of the projects) of
21 the cost of producing such electric power, including
22 the amortization of the capital investment allocated
23 to power over a reasonable period of years and pay-
24 ments provided for in section 11(b)(9) of this Act;
25 and

1 “(3) at levels to produce such additional power
2 revenues as may be required, in the aggregate with
3 all other power revenues of the Administrator, to
4 pay when due the principal of, premiums, discounts,
5 and expenses in connection with the issuance of and
6 interest on all bonds issued and outstanding pursu-
7 ant to this Act for other than the construction, ac-
8 quisition, and replacement of the Federal trans-
9 mission system, and amounts required to establish
10 and maintain reserve and other funds and accounts
11 established in connection therewith.

12 Electric power rates under this section shall be established
13 by the Administrator in accordance with section 7 of the
14 Pacific Northwest Electric Power Planning and Conserva-
15 tion Act.”.

16 (4) Section 10 of the Federal Columbia River Trans-
17 mission System Act (16 U.S.C. 838h) is repealed.

18 (c) REGIONAL PREFERENCE ACT.—Section 6 of Pub-
19 lic Law 88–552 (16 U.S.C. 837e), commonly known as
20 the “Regional Preference Act”, is amended by striking
21 “Federal energy or” in the first sentence and by striking
22 the second sentence.

23 (d) NORTHWEST POWER ACT.—(1) Section 7(a)(1)
24 of the Pacific Northwest Electric Power Planning and

1 Conservation Act (16 U.S.C. 839e(a)(1)) is amended to
2 read as follows:

3 “(a)(1) The Administrator shall establish, and peri-
4 odically review and revise, rates for the sale and disposi-
5 tion of electric power and shall periodically review and,
6 if necessary, propose revisions to rates for the trans-
7 mission of electric power. Rates for the sale and disposi-
8 tion of electric power shall be established and, as appro-
9 priate, revised to recover, in accordance with sound busi-
10 ness principles, the costs associated with the acquisition
11 and conservation of electric power, including the amortiza-
12 tion of the Federal investment allocable to electric power
13 rates in the Federal Columbia River Power System (in-
14 cluding irrigation electric power-related costs required to
15 be repaid out of electric power revenues) over a reasonable
16 period of years and the other costs and expenses incurred
17 by the Administrator pursuant to this Act and other provi-
18 sions of law. Rates for the sale and disposition of electric
19 power shall be established in accordance with section 9
20 of the Federal Columbia River Transmission System Act
21 (16 U.S.C. 838g), section 5 of the Flood Control Act of
22 1944 (16 U.S.C. 825s), and this Act.”.

23 (2) Section 7(a)(2) of the Pacific Northwest Electric
24 Power Planning and Conservation Act (16 U.S.C.
25 839e(a)(2)) is amended—

1 (A) by striking “Rates” and inserting “Power
2 rates”;

3 (B) by inserting “and” after the comma in sub-
4 paragraph (A);

5 (C) by striking “, and” and inserting a period
6 at the end of subparagraph (B); and

7 (D) by striking subparagraph (C).

8 (3) Section 7(i) of the Pacific Northwest Electric
9 Power Planning and Conservation Act (16 U.S.C. 839e(i))
10 is amended by inserting “power” after “establishing” in
11 the first sentence.

12 (4) Section 9(d) of the Pacific Northwest Electric
13 Power Planning and Conservation Act (16 U.S.C.
14 839f(d)) is amended by striking “transmission access,”
15 and inserting “power” before “services” in the second sen-
16 tence.

17 (5) Section 9(i)(3) of the Pacific Northwest Electric
18 Power Planning and Conservation Act (16 U.S.C.
19 839f(i)(3)) is amended by inserting “power” before “serv-
20 ices” each place it appears, and by striking “trans-
21 mission,” in the first sentence.

22 (e) BONNEVILLE PROJECT ACT.—Section 2(e) of the
23 Bonneville Project Act (16 U.S.C. 832a(e)) is amended
24 by striking the colon and all that follows and inserting
25 a period.

Subtitle C—Other Power Marketing Administrations

SEC. 631. DEFINITIONS.

For purposes of this subtitle:

(1) The term “Administrator” means the administrator of a Federal power marketing administration.

(2) The term “Commission” means the Federal Energy Regulatory Commission.

(3) The term “Federal power marketing administrations” means the Western Area Power Administration, Southwestern Power Administration, and Southeastern Power Administration.

(4) The term “power generating agencies” means the Bureau of Reclamation, the Army Corps of Engineers, and the International Boundary and Water Commission.

(5) The term “public utility” means a public utility as defined in section 201(e)(1) the Federal Power Act.

SEC. 632. WHOLESALE POWER SALES BY FEDERAL POWER MARKETING ADMINISTRATIONS.

(a) RATES, TERMS, AND CONDITIONS.—(1) All rates and charges made, demanded, or received for the sale of electric energy and capacity by each Federal power mar-

1 keting administration to its electric energy customers shall
2 be the lowest possible rates and charges that will recover
3 from such customers over a reasonable period of years,
4 in accordance with sound business principles, all costs in-
5 curred by the United States for the production of electric
6 energy sold by such Federal power marketing administra-
7 tion, including repayment of the capital investment allo-
8 cated to power and costs assigned by Acts of Congress
9 to power for repayment.

10 (2) The Commission may modify proposed rates sub-
11 mitted by any Federal power marketing administration
12 and establish terms and conditions consistent with this
13 subsection. In its determination of rates, terms, and condi-
14 tions for the sale of electric energy and capacity by the
15 Federal power marketing administrations the Commission
16 shall not review policy judgments and interpretations of
17 laws and regulations made by the power generating agen-
18 cies.

19 (b) EXISTING RATES.—All rates, terms, and condi-
20 tions for the sale of electric energy and capacity by the
21 Federal power marketing administrations placed into ef-
22 fect on a final basis prior to the date of enactment of this
23 Act shall remain in full force and effect unless the Com-
24 mission determines, after a hearing held upon its own mo-
25 tion or upon complaint, that the rates, terms, and condi-

1 tions are inconsistent with subsection (a)(1) and estab-
2 lishes new rates, terms, and conditions.

3 (c) PERIODIC REVIEW.—The Administrators shall
4 periodically review the rates and charges made, demanded,
5 or received by each Federal power marketing administra-
6 tion for the sale of electric energy and capacity. In the
7 event the rates and charges made, demanded, or received
8 by any Federal power marketing administration are incon-
9 sistent with subsection (a)(1), the Administrator of that
10 administration shall propose revised rates. Such rates
11 shall be established in accordance with this section, section
12 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), sec-
13 tion 9(c) of the Reclamation Project Act of 1939 (43
14 U.S.C. 485h(c)), and the Acts specifically applicable to in-
15 dividual projects of the power systems of the power gener-
16 ating agencies.

17 **SEC. 633. REGULATION OF FEDERAL POWER MARKETING**
18 **ADMINISTRATION TRANSMISSION SYSTEMS.**

19 Notwithstanding section 201(f) of the Federal Power
20 Act, sections 202(h), 205, 206, 208, and 210 through 213
21 and sections 301 through 304, 306, 307 (except the last
22 sentence of paragraph (c)), 308, 309, 313, and 317 of the
23 Federal Power Act apply to the transmission of electric
24 energy by the Federal power marketing administrations
25 to the same extent and in the same manner as such provi-

1 sions apply to the transmission of electric energy by a pub-
2 lic utility otherwise subject to the jurisdiction of the Com-
3 mission under part II of such Act.

4 **SEC. 634. ACCOUNTING.**

5 Not later than six months after the date of enactment
6 of this Act, the Commission shall promulgate rules con-
7 taining each of the following:

8 (1) ACCOUNTING PRINCIPLES AND REQUIRE-
9 MENTS.—Procedures to ensure that the Federal
10 power marketing administrations utilize the same
11 accounting principles and requirements as are appli-
12 cable to public utilities pursuant to parts II and III
13 of the Federal Power Act (16 U.S.C. 792 and fol-
14 lowing) with respect to accounting for revenue, ex-
15 penses, investments, and depreciation.

16 (2) COMPLIANCE.—Procedures for the filing of
17 complaints with the Commission by interested per-
18 sons seeking to ensure compliance with the proce-
19 dures of this section.

20 (3) ADMINISTRATIVE RECONCILIATION.—Proce-
21 dures to ensure that the power generating agencies
22 and the Administrators maintain a consistent set of
23 books and records for purposes of repayment obliga-
24 tions.

1 **SEC. 635. APPLICATION OF ANTITRUST LAW.**

2 (a) IN GENERAL.—Each Federal power marketing
3 administration shall be subject to the antitrust laws of the
4 United States with respect to its sale of electric energy
5 and capacity and the operation of its transmission system.
6 For purposes of this section, the term “antitrust laws”
7 has the meaning given such term in subsection (a) of the
8 first section of the Clayton Act (15 U.S.C. 12(a)), except
9 that such term includes section 5 of the Federal Trade
10 Commission Act (15 U.S.C. 45) to the extent that such
11 section 5 applies to unfair methods of competition.

12 (b) DAMAGES.—No damages, interest on damages,
13 costs, or attorney’s fees may be recovered under section
14 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
15 15c) from a Federal power marketing administration.

16 **TITLE VII—ENVIRONMENTAL**
17 **PROVISIONS**

18 **SEC. 701. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

19 Section 1212 of the Energy Policy Act of 1992 is
20 amended to read as follows:

21 **“SEC. 1212. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

22 “(a) INCENTIVE PAYMENTS.—For electric energy
23 generated and sold by a qualified renewable energy facility
24 during the incentive period, the Secretary of Energy (re-
25 ferred to in this section as the ‘Secretary’) shall make,
26 subject to the availability of appropriations, incentive pay-

1 ments to the owner or operator of such facility. The
2 amount of such payment made to any such owner or oper-
3 ator shall be as determined under subsection (e) of this
4 section. Payments under this section may only be made
5 upon receipt by the Secretary of an incentive payment ap-
6 plication which establishes that the applicant is eligible to
7 receive such payment and which satisfies such other re-
8 quirements as the Secretary deems necessary. Such appli-
9 cation shall be in such form, and shall be submitted at
10 such time, as the Secretary shall establish.

11 “(b) QUALIFIED RENEWABLE ENERGY FACILITY.—
12 For purposes of this section, a ‘qualified renewable energy
13 facility’ is a facility which is owned by a State or any polit-
14 ical subdivision of a State (or an agency, authority, or in-
15 strumentality of a State or a political subdivision), by any
16 corporation or association which is wholly owned, directly
17 or indirectly, by one or more of the foregoing, or by a
18 nonprofit electrical cooperative and which generates elec-
19 tric energy for sale using solar energy, wind, biomass, or
20 geothermal.

21 “(c) ELIGIBILITY WINDOW.—Payments may be made
22 under this section only for electric energy generated from
23 a qualified renewable energy facility first used during the
24 period of 10 fiscal years beginning with the first full fiscal
25 year occurring after the date of enactment of this Act.

1 “(d) INCENTIVE PERIOD.—A qualified renewable en-
2 ergy facility may receive payments under this section for
3 a period of 10 fiscal years (referred to in this section as
4 the ‘incentive period’). Such period shall begin with the
5 fiscal year in which electric energy generated from the fa-
6 cility is first eligible for such payments.

7 “(e) AMOUNT OF PAYMENT.—

8 “(1) IN GENERAL.—Payments made by the
9 Secretary under this section to the owner or oper-
10 ator of a qualified renewable energy facility shall be
11 based on the number of kilowatt hours of electric en-
12 ergy generated by the facility through the use of
13 solar, wind, biomass, or geothermal energy during
14 the incentive period. For any facility, the amount of
15 such payment shall be 1.5 cents per kilowatt hour,
16 adjusted as provided in paragraph (2).

17 “(2) ADJUSTMENTS.—The amount of the pay-
18 ment made to any person under this subsection as
19 provided in paragraph (1) shall be adjusted for infla-
20 tion for each fiscal year beginning after calendar
21 year 1999 in the same manner as provided in the
22 provisions of section 29(d)(2)(B) of the Internal
23 Revenue Code of 1986, except that in applying such
24 provisions the calendar year 1999 shall be sub-
25 stituted for calendar year 1979.

1 “(f) SUNSET.—No payment may be made under this
2 section to any qualified renewable energy facility after the
3 expiration of the period of 20 fiscal years beginning with
4 the first full fiscal year occurring after the date of enact-
5 ment of this Act, and no payment made be made under
6 this section to any such facility after a payment has been
7 made with respect to such facility for a period of 10 fiscal
8 years.

9 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated to the Secretary to carry
11 out the purposes of this section such sums as may be nec-
12 essary for each of the fiscal years 2000 through 2004.”.

13 **SEC. 702. NET METERING.**

14 (a) DEFINITIONS.—For purposes of this section:

15 (1) The term “eligible on-site generating facil-
16 ity” means a facility on the site of a retail electric
17 consumer with a peak generating capacity of 20 kilo-
18 watts or less that is fueled solely by solar energy,
19 wind, geothermal, or biomass.

20 (2) The term “net metering service” means
21 service to a retail electric consumer under which
22 electric energy generated by that consumer from an
23 eligible on-site generating facility and delivered to
24 local distribution facilities through the same meter
25 through which purchased electric energy is received

1 may be used to offset electric energy provided by the
2 retail electric supplier to the retail electric consumer
3 during the applicable billing period so that a retail
4 electric consumer is billed only for the net electric
5 energy consumed during the billing period, but in no
6 event shall the net be less than zero during the ap-
7 plicable billing period.

8 (3) The terms “retail electric consumer” and
9 “retail electric supplier” have the meaning given
10 such term in section 3 of the Federal Power Act.

11 (b) REQUIREMENT TO PROVIDE NET METERING
12 SERVICE.—Each retail electric supplier shall make avail-
13 able upon request net metering service to any retail elec-
14 tric consumer that the supplier currently serves or solicits
15 for service.

16 (c) STATE AUTHORITY.—This section does not pre-
17 clude a State from imposing additional requirements con-
18 sistent with the requirements in this section, including the
19 imposition of a cap limiting the amount of net metering
20 available in the State. Nothing in this Act or any other
21 Federal law preempts or otherwise affects authority under
22 State law to require a retail electric supplier to make avail-
23 able net metering service to a retail electric consumer
24 which the supplier serves or offers to serve.

1 **TITLE VIII—PROVISIONS RELAT-**
2 **ING TO INTERNAL REVENUE**
3 **CODE**

4 **SEC. 801. BUSINESS ACTIVITIES OF MUTUAL OR COOPERA-**
5 **TIVE ELECTRIC COMPANIES.**

6 Section 501(c)(12) of the Internal Revenue Code of
7 1986 is amended—

8 (1) in subparagraph (C)—

9 (A) in clause (i), by striking “or” at the
10 end;

11 (B) in clause (ii), by striking the period
12 and inserting a comma; and

13 (C) by adding at the end the following
14 clauses:

15 “(iii) from the prepayment of a loan under
16 section 306B of the Rural Electrification Act of
17 1936 (including amendments made after Janu-
18 ary 1, 1987), or

19 “(iv) from revenues received from non-
20 members for qualified open access activities.”;
21 and

22 (2) by adding at the end the following subpara-
23 graph:

24 “(E) For purposes of this paragraph, the term
25 ‘qualified open access activities’, with respect to a

1 mutual or cooperative electric company, means any
2 of the following activities:

3 “(i) Providing open access transmission
4 services and ancillary services that meet the re-
5 quirements of Federal Energy Regulatory Com-
6 mission open access rules or orders or that are
7 provided in accordance with a transmission tar-
8 iff of a regional transmission organization, or
9 other transmission organization, approved by
10 the Commission.

11 “(ii) Delivery on an open access basis of
12 electric energy sold by other retail electric sup-
13 pliers to retail electric consumers served by
14 local distribution facilities owned, controlled, or
15 operated by the company.

16 “(iii) The sale of electric energy from elec-
17 tric output facilities (as defined in section
18 141(f)(4)) in service on the date of enactment
19 of this subparagraph to nonmembers, if the
20 company provides open access to the trans-
21 mission and local distribution facilities it owns,
22 controls, or operates.

23 “(iv) Sales of generation, distribution, or
24 transmission facilities.”.

1 **SEC. 802. TAX-EXEMPT BOND FINANCING OF CERTAIN**
2 **ELECTRIC FACILITIES.**

3 (a) PERMITTED OPEN ACCESS TRANSACTIONS NOT
4 A PRIVATE BUSINESS USE.—Section 141(b)(6) of the In-
5 ternal Revenue Code of 1986 (defining private business
6 use) is amended by adding at the end the following:

7 “(C) PERMITTED OPEN ACCESS TRANS-
8 ACTIONS NOT A PRIVATE BUSINESS USE.—

9 “(i) IN GENERAL.—For purposes of
10 this subsection, the term ‘private business
11 use’ shall not include a permitted open ac-
12 cess transaction.

13 “(ii) PERMITTED OPEN ACCESS
14 TRANSACTION DEFINED.—For purposes of
15 clause (i), the term ‘permitted open access
16 transaction’ means any of the following
17 transactions or activities with respect to an
18 electric output facility (as defined in sub-
19 section (f)(4)(A)) owned by a governmental
20 unit:

21 “(I) Providing open access trans-
22 mission services and ancillary services
23 that meet the requirements of Federal
24 Energy Regulatory Commission open
25 access rules or orders, or that are pro-
26 vided in accordance with a trans-

1 mission tariff of a regional trans-
2 mission organization, or other trans-
3 mission organization, approved by the
4 Commission, or that are consistent
5 with State-administered laws, rules, or
6 orders providing for open transmission
7 access.

8 “(II) Providing open access
9 transmission services and ancillary
10 services pursuant to an agreement ap-
11 proved by the Commission with other
12 participants in a regional transmission
13 organization, or another transmission
14 organization, approved by the Com-
15 mission (which agreement may include
16 transferring control of transmission
17 facilities).

18 “(III) Delivery on an open access
19 basis of electric energy sold by other
20 entities to end-users served by such
21 governmental unit’s distribution facili-
22 ties.

23 “(IV) If open access service is
24 provided under subclause (I) or (III),
25 the sale of electric output of electric

1 output facilities on terms other than
2 those available to the general public if
3 such sale is to an on-system purchaser
4 or is an existing off-system sale.

5 “(V) Such other transactions or
6 activities as may be provided in regu-
7 lations prescribed by the Secretary.

8 “(iii) DEFINITIONS; SPECIAL
9 RULES.—For purposes of this
10 subparagraph—

11 “(I) ON-SYSTEM PURCHASER.—
12 The term ‘on-system purchaser’
13 means a person who purchases electric
14 energy from a governmental unit and
15 whose electric facilities or equipment
16 are directly connected with trans-
17 mission or distribution facilities that
18 are owned by such governmental unit.

19 “(II) OFF-SYSTEM PUR-
20 CHASER.—The term ‘off-system pur-
21 chaser’ means a purchaser of electric
22 energy from a governmental unit
23 other than an on-system purchaser.

24 “(III) EXISTING OFF-SYSTEM
25 SALE.—The term ‘existing off-system

1 sale' means a sale of electric energy
2 to a person (other than a person
3 owned or controlled by the govern-
4 mental unit) that was an off-system
5 purchaser of electric energy in the
6 base year, but not in excess of the kil-
7 owatt hours purchased by such person
8 in such year.

9 “(IV) BASE YEAR.—The term
10 ‘base year’ means 1998 (or, at the
11 election of such unit, 1996 or 1997).

12 “(V) JOINT ACTION AGENCIES.—
13 A member of a joint action agency
14 that is entitled to make a sale de-
15 scribed in clause (ii)(IV) in a year
16 may transfer that entitlement to the
17 joint action agency in accordance with
18 rules of the Secretary.

19 “(VI) GOVERNMENT-OWNED FA-
20 CILITY.—An electric output facility
21 (as defined in subsection (f)(4)(A))
22 shall be treated as owned by a govern-
23 mental unit if it is owned or leased by
24 such governmental unit or if such gov-
25 ernmental unit has capacity rights

1 therein acquired before July 9, 1996,
2 for the purposes of serving one or
3 more customers to which such govern-
4 mental unit had a service obligation
5 on such date under State law or a re-
6 quirements contract.”.

7 (b) ELECTION TO TERMINATE TAX-EXEMPT FI-
8 NANCING.—Section 141 of the Internal Revenue Code of
9 1986 (relating to private activity bond; qualified bond) is
10 amended by adding at the end the following:

11 “(f) ELECTION TO TERMINATE TAX-EXEMPT BOND
12 FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILI-
13 TIES.—

14 “(1) IN GENERAL.—An issuer may make an ir-
15 revocable election under this paragraph to terminate
16 certain tax-exempt financing for electric output fa-
17 cilities. If the issuer makes such election, then—

18 “(A) except as provided in paragraph (2),
19 no bond the interest on which is exempt from
20 tax under section 103 may be issued on or after
21 the date of such election with respect to an elec-
22 tric output facility; and

23 “(B) notwithstanding paragraph (1) or (2)
24 of subsection (a) or paragraph (5) of subsection
25 (b), with respect to an electric output facility no

1 bond that was issued before the date of enact-
2 ment of this subsection, the interest on which
3 was exempt from tax on such date, shall be
4 treated as a private activity bond, for so long
5 as such facility continues to be owned by a gov-
6 ernmental unit.

7 “(2) EXCEPTIONS.—An election under para-
8 graph (1) does not apply to—

9 “(A) any qualified bond (as defined in sub-
10 section (e)),

11 “(B) any eligible refunding bond,

12 “(C) any bond issued to finance a quali-
13 fying T&D facility, or

14 “(D) any bond issued to finance repair of
15 electric output facilities in service on the date
16 of enactment of this subsection. Repairs may
17 not increase by more than a de minimis degree
18 the capacity of the facility beyond its original
19 design.

20 “(3) FORM AND EFFECT OF ELECTIONS.—An
21 election under paragraph (1) shall be made in such
22 a manner as the Secretary prescribes and shall be
23 binding on any successor in interest to the electing
24 issuer.

1 “(4) DEFINITIONS.—For purposes of this
2 subsection—

3 “(A) ELECTRIC OUTPUT FACILITY.—The
4 term ‘electric output facility’ means an output
5 facility that is an electric generation, trans-
6 mission, or distribution facility.

7 “(B) ELIGIBLE REFUNDING BOND.—The
8 term ‘eligible refunding bond’ means State or
9 local bonds issued after an election described in
10 paragraph (1) that directly or indirectly refund
11 State or local bonds issued before such election,
12 if the weighted averaged maturity of the re-
13 funding bonds do not exceed the remaining
14 weighted average maturity of the bonds issued
15 before the election.

16 “(C) QUALIFYING T&D FACILITY.—The
17 term ‘qualifying T&D facility’ means—

18 “(i) transmission facilities over which
19 services described in subsection
20 (b)(6)(C)(ii)(I) are provided, or

21 “(ii) distribution facilities over which
22 services described in subsection
23 (b)(6)(C)(ii)(III) are provided.”.

24 (c) EFFECTIVE DATE, APPLICABILITY, AND TRANSI-
25 TION RULES.—

1 (1) EFFECTIVE DATE.—The amendments made
2 by this section take effect on the date of enactment
3 of this Act, except that a governmental unit may
4 elect to apply section 141(b)(6)(C) of the Internal
5 Revenue Code of 1986, as added by subsection (a),
6 with respect to permitted open access transactions
7 on or after July 9, 1996.

8 (2) APPLICABILITY.—References in this Act to
9 sections of the Internal Revenue Code of 1986 shall
10 be deemed to include references to comparable sec-
11 tions of the Internal Revenue Code of 1954.

12 (3) TRANSITION RULES.—

13 (A) PRIVATE BUSINESS USE.—Any activity
14 that was not a private business use prior to the
15 effective date of the amendment made by sub-
16 section (a) shall not be deemed to be a private
17 business use by reason of the enactment of such
18 amendment.

19 (B) ELECTION.—An issuer making the
20 election under section 141(f) of the Internal
21 Revenue Code of 1986, as added by subsection
22 (b), shall not be liable under any contract in ef-
23 fect on the date of enactment of this Act for
24 any claim arising from having made the elec-
25 tion.

1 **SEC. 803. NUCLEAR DECOMMISSIONING COSTS.**

2 (a) INCREASE IN AMOUNT PERMITTED TO BE PAID
3 INTO NUCLEAR DECOMMISSIONING RESERVE FUND.—

4 Subsection (b) of section 468A of the Internal Revenue
5 Code of 1986 is amended to read as follows:

6 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

7 “(1) IN GENERAL.—The amount which a tax-
8 payer may pay into the Fund for any taxable year
9 during the funding period shall not exceed the level
10 funding amount determined pursuant to subsection
11 (d), except—

12 “(A) where the taxpayer is permitted by
13 Federal or State law or regulation (including
14 authorization by a public service commission) to
15 charge customers a greater amount for nuclear
16 decommissioning costs, in which case the tax-
17 payer may pay into the Fund such greater
18 amount; or

19 “(B) in connection with the transfer of a
20 nuclear powerplant, where the transferor or
21 transferee (or both) is required pursuant to the
22 terms of the transfer to contribute a greater
23 amount for nuclear decommissioning costs, in
24 which case the transferor or transferee (or
25 both) may pay into the Fund such greater
26 amount.

1 “(2) CONTRIBUTIONS AFTER FUNDING PE-
2 RIOD.—Notwithstanding any other provision of this
3 section, a taxpayer may make deductible payments
4 to the Fund in any taxable year between the end of
5 the funding period and the termination of the license
6 issued by the Nuclear Regulatory Commission for
7 the nuclear powerplant to which the Fund relates
8 provided such payments do not cause the assets of
9 the Fund to exceed the nuclear decommissioning
10 costs allocable to the taxpayer’s current or former
11 interest in the nuclear powerplant to which the Fund
12 relates. The foregoing limitation shall be applied by
13 taking into account a reasonable rate of inflation for
14 the nuclear decommissioning costs and a reasonable
15 after-tax rate of return on the assets of the Fund
16 until such assets are anticipated to be expended.”.

17 (b) DEDUCTION FOR NUCLEAR DECOMMISSIONING
18 COSTS WHEN PAID.—Paragraph (2) of section 468A(c)
19 of such Code is amended to read as follows:

20 “(2) DEDUCTION OF NUCLEAR DECOMMIS-
21 SIONING COSTS.—In addition to any deduction under
22 subsection (a), nuclear decommissioning costs paid
23 or incurred by the taxpayer during any taxable year
24 shall constitute ordinary and necessary expenses in
25 carrying on a trade or business under section 162.”.

1 (c) LEVEL FUNDING AMOUNTS.—Subsection (d) of
2 section 468A of such Code is amended to read as follows:

3 “(d) LEVEL FUNDING AMOUNTS.—

4 “(1) ANNUAL AMOUNTS.—For purposes of this
5 section, the level funding amount for any taxable
6 year shall equal the annual amount required to be
7 contributed to the Fund in each year remaining in
8 the funding period in order for the Fund to accumu-
9 late the nuclear decommissioning costs allocable to
10 the taxpayer’s current or former interest in the nu-
11 clear powerplant to which the Fund relates. The an-
12 nual amount described in the foregoing sentence
13 shall be calculated by taking into account a reason-
14 able rate of inflation for the nuclear decommis-
15 sioning costs and a reasonable after-tax rate of re-
16 turn on the assets of the Fund until such assets are
17 anticipated to be expended.

18 “(2) FUNDING PERIOD.—The funding period
19 for a Fund shall end on the last day of the last tax-
20 able year of the expected operating life of the nu-
21 clear powerplant.

22 “(3) NUCLEAR DECOMMISSIONING COSTS.—For
23 purposes of this section, the term ‘nuclear decom-
24 missioning costs’ shall mean all costs to be incurred
25 in connection with entombing, decontaminating, dis-

1 mantling, removing, and disposing of a nuclear pow-
2 erplant, and shall include all associated preparation,
3 security, fuel storage, and radiation monitoring
4 costs. The taxpayer may identify such costs by ref-
5 erence either to a site-specific engineering study or
6 to the financial assurance amount calculated pursu-
7 ant to section 50.75 of title 10 of the Code of Fed-
8 eral Regulations. The term shall include all such
9 costs which, outside of the decommissioning context,
10 might otherwise be capital expenditures.”.

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to amounts paid after June 8,
13 1999, in taxable years ending after such date.

14 **SEC. 804. RENEWABLE ENERGY TAX CREDIT.**

15 (a) IN GENERAL.—Paragraph (3) of section 45(c) of
16 the Internal Revenue Code of 1986 (defining qualified fa-
17 cility) is amended to read as follows:

18 “(3) QUALIFIED FACILITY.—The term ‘quali-
19 fied facility’ means any facility owned by the tax-
20 payer which is originally placed in service—

21 “(A) in the case of a facility using wind to
22 produce electricity, after December 31, 1993,
23 and before July 1, 2004, and

1 “(B) in the case of a facility using closed-
2 loop biomass to produce electricity, after De-
3 cember 31, 1992, and before July 1, 1999.”.

4 (b) CREDIT NOT TO APPLY TO ELECTRICITY SOLD
5 TO UTILITIES UNDER CERTAIN CONTRACTS.—Subsection
6 (b) of section 45 of such Code is amended by adding at
7 the end the following new paragraph:

8 “(4) CREDIT NOT TO APPLY TO ELECTRICITY
9 SOLD TO UTILITIES UNDER CERTAIN CONTRACTS.—

10 “(A) IN GENERAL.—The credit determined
11 under subsection (a) shall not apply to
12 electricity—

13 “(i) produced at a qualified facility
14 placed in service by the taxpayer after
15 June 30, 1999, and

16 “(ii) sold to a utility pursuant to a
17 contract originally entered into before Jan-
18 uary 1, 1987 (whether or not amended or
19 restated after that date).

20 “(B) EXCEPTION.—Subparagraph (A)
21 shall not apply if—

22 “(i) the prices for energy and capacity
23 from such facility are established pursuant
24 to an amendment to the contract referred
25 to in subparagraph (A)(ii);

1 “(ii) such amendment provides that
2 the prices set forth in the contract which
3 exceed avoided cost prices determined at
4 the time of delivery shall apply only to an-
5 nual quantities of electricity (prorated for
6 partial years) which do not exceed the
7 greater of—

8 “(I) the average annual quantity
9 of electricity sold to the utility under
10 the contract during calendar years
11 1994, 1995, 1996, 1997, and 1998,
12 or

13 “(II) the estimate of the annual
14 electricity production set forth in the
15 contract, or, if there is no such esti-
16 mate, the greatest annual quantity of
17 electricity sold to the utility under the
18 contract in any of the calendar years
19 1996, 1997, or 1998; and

20 “(iii) such amendment provides that
21 energy and capacity in excess of the limita-
22 tion in clause (ii) may be—

23 “(I) sold to the utility only at
24 prices that do not exceed avoided cost

1 prices determined at the time of deliv-
2 ery, or
3 “(II) sold to a third party subject
4 to a mutually agreed upon advance
5 notice to the utility.

6 For purposes of this subparagraph, avoided cost
7 prices shall be determined as provided for in 18
8 CFR 292.304(d)(1) or any successor regula-
9 tion.”.

10 **TITLE IX—MISCELLANEOUS** 11 **PROVISION**

12 **SEC. 901. STUDY.**

13 The Secretary of Energy shall report to the Congress
14 within two years after the enactment of this Act on the
15 extent to which actions taken by the States have removed
16 regulatory and statutory barriers to interstate commerce
17 in electric energy. The report shall describe any remaining
18 barriers to interstate commerce and shall make rec-
19 ommendations to the Congress for additional action that
20 may be necessary to lower or eliminate barriers to inter-
21 state commerce in electric energy consistent with the de-
22 velopment of a fully competitive marketplace.

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